

**LINES CROSSED: SEPARATION OF CHURCH AND  
STATE. HAS THE OBAMA ADMINISTRATION  
TRAMPLED ON FREEDOM OF RELIGION AND  
FREEDOM OF CONSCIENCE?**

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**HEARING**

BEFORE THE

COMMITTEE ON OVERSIGHT  
AND GOVERNMENT REFORM  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

FEBRUARY 16, 2012

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**THURSDAY, FEBRUARY 16, 2012**

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,  
*Washington, DC.*

The committee met, pursuant to notice, at 9:32 a.m., in room 2154, Rayburn House Office Building, Hon. Darrell E. Issa (chairman of the committee) presiding.

Present: Representatives Issa, Burton, Turner, McHenry, Jordan, Chaffetz, Walberg, Lankford, Amash, Buerkle, Gosar, DesJarlais, Walsh, Gowdy, Ross, Farenthold, Kelly, Cummings, Towns, Maloney, Norton, Kucinich, Tierney, Clay, Connolly, Quigley, Davis, and Murphy.

Also present: Representatives Mulvaney and DeLauro.

Staff present: Ali Ahmad, communications advisor; Alexia Ardolina, Will L. Boyington, Drew Colliatie, and Nadia A. Zahran, staff assistants; Kurt Bardella, senior policy advisor; Brien A. Beattie, Brian Blase, and Ryan Little, professional staff members; Michael R. Bebeau and Gwen D'Luzansky, assistant clerks; Robert Borden, general counsel; Molly Boyl, parliamentarian; Lawrence J. Brady, staff director; Sharon Casey, senior assistant clerk; John Cuaderes, deputy staff director; Adam P. Fromm, director of Member services and committee operations; Linda Good, chief clerk; Justin LoFranco, deputy director of digital strategy; Mark D. Marin, director of oversight; Ashok M. Pinto, deputy chief counsel, investigations; Laura L. Rush, deputy chief clerk; Rebecca Watkins, press secretary; Kevin Corbin, minority deputy clerk; Ashley Etienne, minority director of communications; Susanne Sachsman Grooms, minority chief counsel; Jennifer Hoffman, minority press secretary; Carla Hultberg, minority chief clerk; Adam Koshkin, minority staff assistant; Una Lee, Brian Quinn, and Ellen Zeng, minority counsels; Suzanne Owen, minority health policy advisor; Dave Rapallo, minority staff director; and Mark Stephenson, minority director of legislation.

Chairman ISSA. The committee will come to order.

The Oversight Committee exists to secure two fundamental principles. First, America has a right to know that the money Washington takes from them is well spent; and, second, Americans deserve an efficient, effective government that works for them. Our duty on the Oversight and Government Reform Committee is to

protect these rights. Our solemn responsibility is to hold government accountable to taxpayers, because taxpayers have a right to know what they get from their government. Our responsibility is to work tirelessly in partnership with citizen watchdogs to deliver the facts to the American people and bring genuine reform to the Federal bureaucracy.

Today's hearing is a solemn one. It involves freedom of conscience. Ultimately, without the first pillar of our freedoms, the freedoms that we did not give up to our government, the American democracy and the experiment that has lasted over 200 years falls for no purpose. The architects of our Constitution believed our country would be a place that would accommodate all religions. In fact, they could not agree on religion more than anything else.

Our Founding Fathers came from different religions, and they did not trust that one religious order would not circumvent another, for, in fact, many came from a country in which they were of one religion and had to change to another on a government edict.

Many looked at establishment of religion as all it is about, but ultimately our Founding Fathers, including Thomas Jefferson, including George Washington and others, all understood that, in fact, their conscience was their guide, and their conscience came overwhelmingly from their religious convictions, and therefore time and time again they made it clear that a man's conscience, particularly if it flowed from his faith, had a special role in our freedoms.

I might note, not for a subject that many would bring up today, but that, in fact, since our founding, men primarily, and now men and women, can refuse to serve under arms for reasons of personal conviction stemming from their faith. There is no greater obligation than to serve your country in time of war, but, in fact, our country for hundreds of years has understood that faith comes first, and that no man or woman should ever be forced to betray that faith.

Many will frame today not as First Amendment, but about the particular issue that comes before us related to the Obama health care plan. This is not about that. In fact, if it is about that, we should be over in the Energy and Commerce Committee or some committee dealing with health or other issues. This committee wants to fully vet with the most knowledgeable of both clergy and lay people that we could find the real questions of where does faith begin, and where does it end; where does government's ability to influence decisions made by people of faith begin, and where does it end. These basic questions go to the heart of the Constitution.

I recognize that there will be people who do not like the outcome of any decision involving the Constitution, whether it is the Miranda warning related to self-incrimination, whether it is, in fact, a free press able to denounce people in government or others; whether it is one after another of the Bill of Rights or other items so entrenched in the Constitution. Many of them are objectionable to others. But let us understand, inalienable rights flow from all of us, whether we are in the majority or an incredibly small minority. That ultimately is what we are going to discuss today.

I expect that we will hear from people who have spent their entire life pondering these very questions of faith and conscience. I expect we will meet in the second panel particularly from people who must execute both faith and often education and other respon-

sibilities that have fallen to church and churchlike groups since our founding.

I take this as very solemn. I know that all of us on the panel do. The tone today is about learning and listening, and I certainly hope all of us who came here, including the students who are in the audience today, recognize how important this juncture in our democracy is.

With that, I recognize the ranking member for his opening statement.

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

As the son of two Pentecostal ministers from a small church in Baltimore, I understand the position of the religious community on this issue. I know both through my faith and my legal training that we have an obligation as a Nation to make accommodations when appropriate to avoid undue interference with the practice of religion.

But there is another core interest we must consider, and that is the interest of women. The pill has a profound impact on their well-being, far more than any man in this room can possibly know. It has allowed women to control their lives and make very personal decisions about how many children to have and when to have them.

I think everyone understands what is going on here today. The chairman is promoting a conspiracy theory that the Federal Government is conducting a war against religion. He stacked the hearing with witnesses who agree with his position. He has not invited Catholic Health Association, Catholic Charities, Catholics United or a host of other Catholic groups that praise the White House for making the accommodation they made last week. He also has refused to allow a minority witness to testify about the interests of women who want safe and affordable coverage for basic preventive health care, including contraception.

In my opinion, this committee commits a massive injustice by trying to pretend that the views of millions of women across this country are meaningless or worthless or irrelevant to the debate. For these reasons I yield the rest of my time to the Congresswoman from New York, Carolyn Maloney.

Mrs. MALONEY. Thank you, Elijah. I know firsthand of your deep faith, and I know you place tremendous value on your faith and on open dialog, so I appreciate your efforts to get a more balanced hearing today.

What I want to know is where are the women? When I look at this panel, I don't see one single woman representing the tens of millions of women across the country who want and need insurance coverage for basic preventive health care services, including family planning. Where are the women?

Mr. Chairman, I was deeply disturbed that you rejected our request to hear from a woman, a third-year student at Georgetown Law School named Sandra Fluke. She hoped to tell this committee about a classmate of hers who was diagnosed with a syndrome that causes ovarian cysts. Her doctor prescribed a pill to treat this disease, but her student insurance did not cover it. Over several months, she paid out hundreds of dollars in out-of-pocket costs until she could no longer afford her medication, and she eventually

ended up losing her ovary. Your staff told us you personally rejected Ms. Fluke's testimony, saying, "The hearing is not about reproductive rights and contraception."

Of course this hearing is about rights, contraception and birth control. It is about the fact that women want to have access to basic health services, family planning through their health insurance plan. But some would prevent them from having it by using lawsuits and ballot initiatives in dozens of States to roll back the fundamental rights of women to a time when the government thought what happened in the bedroom was their business and contraceptives were illegal. Tens of millions of us who are following these hearings lived through those times, and I can tell you with great certainty we will not be forced back to that dark and primitive era.

This is why last week the administration announced a common-sense accommodation. Churches do not have to provide insurance coverage for contraceptives. They do not have to approve them. They do not have to prescribe them, dispense them or use them. But women will have the right to access them. Women who work at nonprofit religious entities like hospitals and universities will be able to obtain coverage directly from their insurance companies; not from religious organizations, but from independent insurance companies. Medical and health experts support this policy, economists support it, and a host of Catholic groups that were conspicuously not invited to testify today.

The vast majority of women, including women of faith, use some form of birth control at some point in their lives, whether to plan the number or spacing of their children or to address significant medical conditions. With all due respect to religious leaders, though you have every right to follow your conscience and honor the dictates of your faith, no one should have the power to impose their faith on others, to bend them to your will, simply because they happen to work for you. That in itself is an assault on the fundamental freedoms enshrined in our Constitution.

I ask, Mr. Chairman, for an additional 30 seconds.

Chairman ISSA. I apologize, but the gentleman's time has expired that he yielded to you.

Mrs. MALONEY. Okay. Thank you.

Chairman ISSA. I would ask unanimous consent that the gentelady be allowed to speak out of order for an additional 30 seconds.

Without objection, so ordered.

Mrs. MALONEY. Thank you, Mr. Chairman, and I am using this to urge you once again to let Ms. Fluke testify. Let one woman speak for the panel right now on this all-male panel. She is here in the audience today. She is steps away. Even if you think you will disagree with everything she says, don't we owe it to the tens of millions of American women whose lives will be affected to let just one, just one woman speak on their behalf today on this panel as requested by the Democratic minority?

Chairman ISSA. I thank the gentelady.

I now ask unanimous consent that the statements, including the Web site—there we go. That is better. I now ask unanimous consent that both the Web site image and the statement by the Catho-

lic Charities be accepted into the record, in which they say, “In response to a great number of mischaracterizations in media, Catholic Charities USA wants to make two things very clear: We have not endorsed the accommodations of the HHS mandate that was announced by the administration last Friday; and, second, we unequivocally share the goal of the U.S. Catholic bishops to uphold religious liberty and will continue to work with the Catholic bishops toward that goal. Any representation to the contrary is false.”

Without objection, so ordered.

[The information referred to follows:]

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- 7 - Catholic Charities USA Partners with Parentfinder.com for Nationwide Adoption Services: » [more](#)

**In response to a great number of mischaracterizations in the media, Catholic Charities USA wants to make two things very clear:**

1. We have not endorsed the accommodation to the HHS mandate that was announced by the Administration last Friday.
2. We unequivocally share the goal of the US Catholic bishops to uphold religious liberty and will continue to work with the USCCB towards that goal.

Any representation to the contrary is false.

**What You Need to Know**

CCUSA on the HHS mandate, shared goals with USCCB, and commitment to protecting our religious liberty and ensuring continued access to quality health care for our 70,000 employees and their families. Please [click here](#) for additional information and resources.

**Rev. Larry Snyder's Blog**

In his [latest post](#), Rev. Snyder emphasizes the importance of expressing God's love for those who are in need.



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**About Catholic Charities USA**  
 Catholic Charities USA is the national office for Catholic Charities agencies and affiliates nationwide. As a professional association and social justice movement, Catholic Charities USA supports local Catholic Charities as they provide help and create hope for over 9 million people each year regardless of religious, social, or economic backgrounds.



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Chairman ISSA. Additionally, I ask unanimous consent that the letter dated February 15, 2012, entitled "Unacceptable" be placed in the record. Without objection, so ordered.  
[The information referred to follows:]



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## UNACCEPTABLE

FEBRUARY 15, 2012

The Obama administration has offered what it has styled as an “accommodation” for religious institutions in the dispute over the HHS mandate for coverage (without cost sharing) of abortion-inducing drugs, sterilization, and contraception. The administration will now require that all insurance plans cover (“cost free”) these same products and services. Once a religiously-affiliated (or believing individual) employer purchases insurance (as it must, by law), the insurance company will then contact the insured employees to advise them that the terms of the policy include coverage for these objectionable things.

This so-called “accommodation” changes nothing of moral substance and fails to remove the assault on religious liberty and the rights of conscience which gave rise to the controversy. It is certainly no compromise. The reason for the original bipartisan uproar was the administration’s insistence that religious employers, be they institutions or individuals, provide insurance that covered services they regard as gravely immoral and unjust. Under the new rule, the government still coerces religious institutions and individuals to purchase insurance policies that include the very same services.

It is no answer to respond that the religious employers are not “paying” for this aspect of the insurance coverage. For one thing, it is unrealistic to suggest that insurance companies will not pass the costs of these additional services on to the purchasers. More importantly, abortion-drugs, sterilizations, and contraceptives are a necessary feature of the policy purchased by the religious institution or believing individual. They will only be made available to those who are insured under such policy, *by virtue of the terms of the policy*.

It is morally obtuse for the administration to suggest (as it does) that this is a meaningful accommodation of religious liberty because the insurance company will be the one to inform the employee that she is entitled to the embryo-destroying “five day after pill” pursuant to the insurance contract purchased by the religious employer. It does not matter *who* explains the terms of the policy purchased by the religiously affiliated or observant employer. What matters is what services the policy covers.

The simple fact is that the Obama administration is compelling religious people and institutions who are employers to purchase a health insurance contract that provides abortion-inducing drugs, contraception, and sterilization. This is a grave violation of religious freedom and cannot stand. It is an insult to the intelligence of Catholics, Protestants, Eastern Orthodox Christians, Jews, Muslims, and other people of faith and conscience to imagine that they will accept an assault on their religious liberty if only it is covered up by a cheap accounting trick.

Finally, it bears noting that by sustaining the original narrow exemptions for churches, auxiliaries, and religious orders, the administration has effectively admitted that the new policy

(like the old one) amounts to a grave infringement on religious liberty. The administration still fails to understand that institutions that employ and serve others of different or no faith are still engaged in a religious mission and, as such, enjoy the protections of the First Amendment.

Signed:

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Chairman ISSA. I will note that the letter is in response to the President's announcement that the government compromised and is signed by over 300 individuals and groups, including universities, professors, religious leaders, journalists, independent scholars, lawyers and think tanks.

Ms. NORTON. Mr. Chairman——

Chairman ISSA. For what purpose does the gentlelady seek recognition?

Ms. NORTON. Mr. Chairman, could I make an inquiry? The gentlelady from New York asked a direct question of the chair, and I did not hear an answer. She asked that the witness——

Chairman ISSA. I understand, and I was prepared the next item to respond to both the ranking member and the gentlelady.

This House takes very seriously the committee rules. It is a tradition, but not a rule, of the committee that the minority have a witness. It is a tradition that the minority have one witness. Just yesterday, the minority asked for and received two witnesses, one on each panel. They were both qualified, one being a U.S. Senator, but yet qualified.

The second, today, we received, not 3 days in advance or 2 days or even a full day in advance as is the committee's requirement, but yesterday beginning at 1:30 there was a dialog, and I would ask unanimous consent that the record of that dialog by email be placed in the record. Without objection, so ordered.

[The information referred to follows:]

## Witnesses for OGR Full Committee Hearing – February 16, 2012

Timeline

Thursday, 2/9, 4:42pm	Majority Clerk emails Notice of 2/16 Full Committee Hearing
Friday, 2/10, 10:45am	Brian Quinn (Minority Staff) emails Mark Marin (Majority Staff) requesting a call to discuss hearing.
Friday, 2/10, ~12:00pm	Marin calls Quinn to discuss hearing. Marin tells Quinn that Majority witnesses are being developed and will include “those who are impacted by the Administration’s rule.” Quinn asks if that includes, for example, the Catholic Bishops. Marin replies that they would be an example of “groups that are in the mix.”
Monday, 2/13, 12:32pm	Marin emails Quinn and asks if the Minority has a witness they would like to request that the Chairman invite to the hearing.
Monday, 2/13, 12:37pm	Quinn emails Marin that the Minority is “[s]till working on a witness” and will email as soon as a decision is made, and asks if Marin will share any additional information on Majority witnesses.
Monday, 2/13, 2:55pm	Marin emails Quinn with the names of six witnesses the Majority has confirmed for 2/16 hearing (Lori, Garvey, Mitchell, Mitchell, Thierfelder, and Oliver).
Monday, 2/13, 4:38pm	Marin emails Quinn with the names of two additional witnesses the Majority has confirmed (Garrett, Jonah)
Monday, 2/13, 5:28pm	Marin emails Quinn and asks if there is anything new on a Minority witness request as official hearing memorandum is about to be sent to Committee Members.
Monday, 2/13, 5:32pm	Quinn emails Marin: “Sorry Mark no witness yet, we are still searching. Looks doubtful that we secure a witness this evening, hope to have some news for you tomorrow morning.”
Monday, 2/13, 5:49pm	OGR Clerks send official Hearing Memorandum to all Committee Members; memorandum includes nine Majority witnesses, no information on Minority witness.
Tuesday, 2/14, 12:58pm	Marin emails Quinn asking for an update on any Minority witness request.
Tuesday, 2/14, 1:14pm	Quinn emails Marin: “We are still working on it.”
Wednesday, 2/15, 1:04pm	Quinn emails Marin requesting two witnesses: Barry Lynn, Executive Director of Americans United for Separation of Church and State on panel one and Sandra Fluke, Georgetown University Law Student on panel two.
Wednesday, 2/15, 1:23pm	Marin emails Quinn stating that the Chairman will invite only one Minority witness will be invited by the Chairman and that the Chairman will determine on which panel the witness will testify.
Wednesday, 2/15, 1:37pm	Quinn emails Marin that he will need to consult with the Ranking Member and asks that Marin explain the reasoning for the Chairman’s decision on one witness.
Wednesday, 2/15, 4:13pm	Quinn emails Marin stating that the Minority withdraws its request for Mr. Lynn but still request Ms. Fluke.
Wednesday, 2/15, 4:18pm	Marin emails Quinn (before seeing prior email above) stating that the Chairman will invite Mr. Lynn as requested by the Minority but has determined that Ms. Fluke is not an appropriate witness for the hearing given its subject matter.
Wednesday, 2/15, ~4:30pm	Witness Invitation letter is signed and sent to Mr. Lynn, one of the Minority’s requested witnesses.
Wednesday, 2/15, 4:33pm	Quinn emails Marin that the Minority has “rescinded” their offer to Mr. Lynn and that Ms. Fluke is the Minority’s requested witness.
Wednesday, 2/15, 4:59pm	Majority Clerk emails revised witness list for 2/16 hearing to all Members, including Mr. Lynn.

Chairman ISSA. In that—I will give it to you in a second. In that dialog, beginning only at 10:45 a.m., and going through 4:59, there was an exchange of requests. The initial request by the minority was for two witnesses, the one who has been mentioned, and Barry Lynn. Barry Lynn is a well-known, I understand, ordained minister, who has spoken on the issues of religious freedom; has entered into both civil and, in fact, legal proceedings for many, many years; is well regarded and well known, even if I disagree.

When asked about the two witness request, I asked, what are their qualifications? Additionally, I recognized immediately Barry Lynn as the executive director of Americans United for Separation of Church and State. He was, in fact, both because of his religious background and because of his position and because of his long-standing on that issue, he was fully qualified, and I accepted him.

During the intervening time outlined here, there was a retraction when we said there would only be one, and instead the minority chose the witness we had not found to be appropriate or qualified. Now, “appropriate and qualified” is a decision I have to make. I asked our staff what is her background, what has she done? They did the usual that we do when we are not provided the 3 days and the forms to go with it. They did a Google search. They looked and found that she was, in fact, and is a college student, who appears to have become energized over this issue and participated in approximately a 45-minute press conference, which is video available. For that reason I have asked my staff to post her entire—the link to the 45-minute press conference so that the public can see her opinion.

I cannot and will not arbitrarily take a majority or minority witness if they do not have the appropriate credentials, both for a hearing at the full committee of the U.S. House of Representatives and if we cannot vet them in a timely fashion.

I believe that you did suggest two witnesses. One was clearly appropriate and qualified. And I might note in closing that if you had asked for a representative of Catholic Charities or some other group, in other words if you had asked for two fully qualified individuals, and particularly if you asked for three or four but done it on Monday when we began saying, where are your witnesses, we would likely have had one on each panel.

So today we will have Barry Lynn. If he comes in time for the second panel, we will include him, and you will not have a witness otherwise. But understand for all the folks that have made this point, you did not ask for it in a timely fashion, not accepting the one of the two that you asked for that we accepted makes it very difficult beginning yesterday and going through the afternoon.

Does that fully answer the gentlelady’s question?

Mrs. Maloney.

Mrs. MALONEY. Ms. Fluke is a student at a well-respected Catholic university. She is affected by these policies. Why in the world is she not qualified?

Chairman ISSA. I appreciate the gentlelady’s question. We are not having a hearing on the policies or the details related to the single issue of ObamaCare and this particular mandate. This hearing is about religious freedom. As you will note, the men that you have noted on the panel come from denominations other than

Roman Catholic. They are, in fact, here to speak about a broad question.

If this hearing were more broadly about health care or ObamaCare, it would likely be—and the President's now legal thing, which we often call ObamaCare—the fact is it probably would be a Ways and Means Committee hearing or an Energy and Commerce. We are here looking at government's bounds of, in fact, not is it a good idea, not does it save or cost money, but, in fact, how does it impact religious organizations and people of conscience and faith. That is the limit of this hearing today, and we have chosen and informed the minority in an appropriate time, starting a week ago, we have said this is the type of people we are going to have and why, and that is hopefully what we will all understand.

Why does the gentleman from Illinois seek recognition?

Mr. QUIGLEY. Mr. Chairman, if I could just address this point with you for a moment?

Chairman ISSA. Please.

Mr. QUIGLEY. You and I have always worked well together. While not always agreeing on issues, we formed the Transparency Caucus together. You know there have been several times when I have crossed party lines to work with you on issues. I just—

Chairman ISSA. Will today be one of those times?

Mr. QUIGLEY. I am betting not. But with all due respect, I think the American public has a funny way of deciding what the core issue is when something happens before this committee. All I am suggesting with the greatest respect is for you to decide what the issue is. Others look at the same points of fact and say the issue is really this. And I think if you talk about liberties and expression, I think freedom of thought is as important as any that you have discussed, and I think that—and I say this without trying to raise your hackle, is that is suppressing that freedom of thought.

It is this notion that one person, as fair as you might be attempting to be, is unilaterally deciding what the issue is. And the core here is—and that is why there is so much controversy on this matter—is people see it in a different way. Until we get past that point, we are going to have problems.

Chairman ISSA. Well, I appreciate the gentleman's—I will take this as the last comment, if you don't mind. The fact is it is the obligation of the majority to set the agenda. When Mr. Towns was chairman, he set the agenda. On occasions he gave me no option for a witness. When Mr. Waxman was, in fact, the chairman, including the staff director who is now whispering in your ear, they gave us one witness on a third panel, and, by the way, we had to have it in a timely fashion.

So I appreciate your comments. The fact is we will now go to our first panel of witnesses. With that, for what purpose does Mr. Turner seek a limited time?

Mr. TURNER. Thank you, Mr. Chairman. I appreciate the opportunity.

Chairman ISSA. The gentleman is recognized for 1 minute.

Mr. TURNER. I would like to welcome to this hearing Dr. Conroy's advanced placement U.S. Government class. Among the 25 high school seniors that we have with us from Georgetown Visitation

Preparatory High School includes my daughter Carolyn, and I appreciate your willingness to allow me to recognize them today.

This is a government class. They, of course, study the issue of the Constitution, the issue of freedom of religion, the issues of freedom of State. This is a hearing that will be very important to them. I appreciate and welcome them on a bipartisan basis to this hearing.

Chairman ISSA. I thank the gentleman.

Ms. NORTON. Mr. Chairman, I have a parliamentary inquiry.

Chairman ISSA. The gentlelady will state her parliamentary inquiry.

Ms. NORTON. You have just made an interpretation of the rules, and I stress the word "interpretation," because it is precisely that.

Chairman ISSA. The gentleman will state her parliamentary inquiry.

Ms. NORTON. I ask the staff to get me the rules, Mr. Chairman. And one thing, Mr. Chairman, we have been denied the right to have a witness. I am going to have the right to make a parliamentary inquiry.

Chairman ISSA. Then state your parliamentary inquiry.

Ms. NORTON. The rule that I am citing, Mr. Chairman, is a rule of the committee, rule 2, and it states, "that every member of the committee shall be provided with a memorandum at least 3 calendar days before each meeting or hearing explaining the names, titles, background and reasons for the appearance of any witnesses."

Last night at 4:59 p.m., committee members were sent a notice that invited two additional Republican witnesses for today's hearing. This notice was less than 24 hours before this morning's hearings, and therefore your actions have violated rule 2, which requires a minimum of 3 days' notice to give committee members adequate time to prepare for the hearing.

Now, of course, under normal circumstances if there had been any deference to the minority, I would not even raise this procedural matter. But you yourself have raised the rules, and in light of that fact, and particularly in light of the fact—

Chairman ISSA. The gentlelady's inquiry is noted. The gentlelady's inquiry is noted. The chairman is prepared to respond. That same rule 2 says, unless there are unusual circumstances. Since you might be aware that one of the two witnesses was Barry Lynn, and since only yesterday, 2 days after what would be the appropriate time for the minority to name their witness request, we were given it. With the short notice, final schedule was determined based on the unusual circumstances of the minority not in a timely fashion submitting any valid request for any witnesses, even though on a daily basis, actually multiple times per day, the majority requested that.

With that, the chair will now welcome our first panel of witnesses.

Ms. NORTON. Mr. Chairman, I ask for a vote on my inquiry.

Chairman ISSA. That we now welcome the Reverend William Lori, Roman Catholic Bishop, of Bridgeport, CT. He is chairman of the Ad Hoc Committee for Religious Liberty of the U.S. Conference of Catholic Bishops; in other words, the go-to on this issue.

The Reverend Matthew Harrison is president of the Lutheran Church, Missouri Synod.

We have two Dr. Mitchells, so this is going to be an interesting day. Dr. C. Ben Mitchell is the Graves Professor of Moral Philosophy at Union University.

Rabbi Meir Soloveichik—close? You are the only rabbi, this will make it a little easier—is director of the Straus Center for Torah and Western Thought at Yeshiva University and associate rabbi of the Congregation—that one you are going to have to help us with.

Rabbi SOLOVEICHIK. Congregation Kehilath Jeshurun.

Chairman ISSA. So it will be.

And Dr. Craig Mitchell is associate professor of ethics, chair of the ethics department, and associate director of the Richard Land Center of Cultural Engagement at Southwestern Baptist Theological Seminary.

I know you are clergy, I know you are sworn to God, but this committee has a rule that you will also be sworn here. Will you please rise to take the oath. Raise your right hands, please.

[Witnesses sworn.]

Chairman ISSA. Let the record reflect that all witnesses answered in the affirmative.

Thank you. Please be seated.

Today is a large panel on the first and the second panel, so your entire statements and extraneous information you would like to supplement within 5 days will be placed in the record. So I would ask you as close as possible to observe the lights or the timers in front of you and stay as close as you can to 5 minutes, recognizing that there are no sermons here today.

With that, Bishop Lori is recognized.

**STATEMENTS OF REVEREND WILLIAM E. LORI, ROMAN CATHOLIC BISHOP OF BRIDGEPORT, CT, CHAIRMAN, AD HOC COMMITTEE FOR RELIGIOUS LIBERTY, U.S. CONFERENCE OF CATHOLIC BISHOPS; REVEREND DR. MATTHEW C. HARRISON, PRESIDENT, THE LUTHERAN CHURCH, MISSOURI SYNOD; C. BEN MITCHELL, PH.D., GRAVES PROFESSOR OF MORAL PHILOSOPHY, UNION UNIVERSITY; RABBI MEIR SOLOVEICHIK, DIRECTOR, STRAUS CENTER FOR TORAH AND WESTERN THOUGHT, YESHIVA UNIVERSITY, ASSOCIATE RABBI, CONGREGATION KEHILATH JESHURUN; AND CRAIG MITCHELL, PH.D., ASSOCIATE PROFESSOR OF ETHICS, CHAIR, ETHICS DEPARTMENT, ASSOCIATE DIRECTOR OF THE RICHARD LAND CENTER FOR CULTURAL ENGAGEMENT, SOUTHWESTERN BAPTIST THEOLOGICAL SEMINARY**

**STATEMENT OF BISHOP WILLIAM E. LORI**

Bishop LORI. Thank you very much, Mr. Chairman, distinguished members of the committee, for the opportunity to testify today.

For my testimony today, I would like to tell a story. Let's call it the parable of the kosher deli. Once upon a time, a new law was proposed so that any business that serves food must serve pork. There is a narrow exception for kosher catering halls attached to synagogues since they serve mostly members of that synagog, but kosher delicatessens are still subject to the mandate.

The Orthodox Jewish community, whose members run kosher delis and many other restaurants and groceries besides, expresses its outrage at the new government mandate, and they are joined by others who have no problem with eating pork, not just the many Jews who eat pork, but people of all faiths, because these others recognize the threat to the principle of religious liberty. They recognize as well the practical impact of the damage to that principle. They know that if the mandate stands, they might be the next ones to be forced under the threat of government sanction to violate their most deeply held beliefs, especially their unpopular beliefs.

Meanwhile, those who support the mandate respond, "But pork is good for you." Other supporters add, "So many Jews eat pork, and those who don't should just get with the times." Still others say, "Those orthodox are just trying to impose their beliefs on everyone else."

But in our hypothetical, those arguments fail in the public debate, because people widely recognize the following points. First, although people may reasonably debate whether pork is good for you, that is not the question posed by the nationwide pork mandate. Instead, the mandate generates this question; whether people who believe, even if they believe in error, that pork is not good for you should be forced by government to serve pork within their very own institutions. In a Nation committed to religious liberty and diversity, the answer, of course, is no.

Second, the fact that some Jews eat pork is simply irrelevant. The fact remains that some Jews do not, and they do not do so out of their most deeply held religious convictions. Does the fact that large majorities in society, even large majorities within protesting religious communities, the fact that they reject a particular religious belief, does that make it permissible for the government to weigh in on one side of the dispute? Does it allow government to punish that minority belief with coercive power? In a Nation committed to religious liberty and diversity, the answer, of course, is no.

Third, the charge that the Orthodox Jews are imposing their beliefs on others has it exactly backward. Again, the question generated by government mandate is whether the government will impose its belief that eating pork is good on objecting Orthodox Jews. Meanwhile, there is no imposition on the freedom of those who want to eat pork; that is, they are subject to no government interference at all in their choice to eat pork, and pork is ubiquitous and cheap and available at the overwhelming majority of restaurants and grocers. Indeed, some pork producers and retailers, even the government itself, are so eager to promote the eating of pork that they sometimes give it a way for free.

In this context, the question is this: Can a customer come to a kosher deli, demand to be served a ham sandwich, and, if refused, bring down severe government sanction on the deli? In a Nation committed to religious liberty and diversity, the answer is no. So in our hypothetical story, because the hypothetical nation is committed to religious liberty and diversity, these arguments carry the day.

Now, in response, those proposing the new law claim to hear and understand the concerns of kosher deli owners and offer them a

new accommodation. You are free to call yourself a kosher deli. You are free not to place ham sandwiches on your menu. You are free not to be the person to prepare the sandwich and hand it over the counter to the customer. But we will force your meat supplier to set up a kiosk on your premises and offer, prepare and serve ham sandwiches to all your customers free of charge, and when you get your monthly bill from your meat supplier, it will include the cost of any of the free ham sandwiches your customers may have accepted, and you will be required to pay the bill.

Now, some who supported the deli owners initially began to celebrate the fact that ham sandwiches didn't need to be on the menu and didn't need to be prepared or served by the deli itself. But on closer examination, they noticed three troubling things. First, all kosher delis will still be forced to pay for the ham sandwiches; second, many of the kosher delis' meat suppliers themselves are forbidden in conscience from offering, preparing or serving pork to anyone; and, third, there are many kosher delis that are their own meat supplier, so the mandate to prepare, offer and serve ham sandwiches still falls on them.

Well, the story has a happy ending. The government recognized that it is absurd for someone to come into a kosher deli and demand a ham sandwich, that it is beyond absurd for that private demand to be backed up with the coercive power of the State, and downright surreal to apply this coercive power, when the government can get the same sandwich cheaply or even free just a few doors down.

The question before the U.S. Government right now is whether the story of our own church institutions that serve the public and that are threatened by the HHS mandate will end happily, too. Will our Nation continue to be——

Chairman ISSA. Bishop Lori, could you wrap up? I will ask for 15 additional seconds.

Bishop LORI. Thank you.

Will our Nation continue to be one committed to religious liberty and diversity? We urge in the strongest possible terms that the answer must be yes. We urge you in the strongest possible terms to answer in the same way.

Thank you for your attention.

Chairman ISSA. I thank you.

[The prepared statement of Bishop Lori follows:]

Thank you, Mr. Chairman and distinguished members of the Committee, for the opportunity to testify today.

For my testimony today, I would like to tell a story. Let's call it, "The Parable of the Kosher Deli."

Once upon a time, a new law is proposed, so that any business that serves food must serve pork. There is a narrow exception for kosher catering halls attached to synagogues, since they serve mostly members of that synagogue, but kosher delicatessens are still subject to the mandate.

The Orthodox Jewish community—whose members run kosher delis and many other restaurants and grocers besides—expresses its outrage at the new government mandate. And they are joined by others who have no problem eating pork—not just the many Jews who eat pork, but people of all faiths—because these others recognize the threat to the principle of religious liberty. They recognize as well the practical impact of the damage to that principle. They know that, if the mandate stands, they might be the next ones forced—under threat of severe government sanction—to violate their most deeply held beliefs, especially their unpopular beliefs.

Meanwhile, those who support the mandate respond, "But pork is good for you. It is, after all, the other white meat." Other supporters add, "So many Jews eat pork, and those who don't should just get with the times." Still others say, "Those Orthodox are just trying to impose their beliefs on everyone else."

But in our hypothetical, those arguments fail in the public debate, because people widely recognize the following.

First, although people may reasonably debate whether pork is good for you, that's not the question posed by the nationwide pork mandate. Instead, the mandate generates the question whether people who believe—even if they believe in error—that pork is not good for you, should be forced by government to serve pork within their very own institutions. In a nation committed to religious liberty and diversity, the answer, of course, is no.

Second, the fact that some (or even most) Jews eat pork is simply irrelevant. The fact remains that some Jews do not—and they do not out of their most deeply held religious convictions. Does the fact that large majorities in society—even large majorities within the protesting religious community—reject a particular religious belief make it permissible for the government to weigh in on one side of

that dispute? Does it allow government to punish that minority belief with its coercive power? In a nation committed to religious liberty and diversity, the answer, of course, is no.

Third, the charge that the Orthodox Jews are imposing their beliefs on others has it exactly backwards. Again, the question generated by a government mandate is whether the government will impose its belief that eating pork is good on objecting Orthodox Jews. Meanwhile, there is no imposition at all on the freedom of those who want to eat pork. That is, they are subject to no government interference at all in their choice to eat pork, and pork is ubiquitous and cheap, available at the overwhelming majority of restaurants and grocers. Indeed, some pork producers and retailers, and even the government itself, are so eager to promote the eating of pork, that they sometimes give pork away for free.

In this context, the question is this: can a customer come to a kosher deli, demand to be served a ham sandwich, and if refused, bring down severe government sanction on the deli. In a nation committed to religious liberty and diversity, the answer, of course, is no.

So in our hypothetical story, because the hypothetical nation is indeed committed to religious liberty and diversity, these arguments carry the day.

In response, those proposing the new law claim to hear and understand the concerns of kosher deli owners, and offer them a new “accommodation.” You are free to call yourself a kosher deli; you are free not to place ham sandwiches on your menu; you are free not to be the person to prepare the sandwich and hand it over the counter to the customer. But we will force your meat supplier to set up a kiosk on your premises, and to offer, prepare, and serve ham sandwiches to all of your customers, free of charge to them. And when you get your monthly bill from your meat supplier, it will include the cost of any of the “free” ham sandwiches that your customers may accept. And you will, of course, be required to pay that bill.

Some who supported the deli owners initially began to celebrate the fact that ham sandwiches didn’t need to be on the menu, and didn’t need to be prepared or served by the deli itself. But on closer examination, they noticed three troubling things. First, all kosher delis will still be forced to pay for the ham sandwiches. Second, many of the kosher delis’ meat suppliers, themselves, are forbidden in conscience from offering, preparing, or serving pork to anyone. Third, there are many kosher delis that are their own meat supplier, so the mandate to offer, prepare, and serve the ham sandwich still falls on them.

This story has a happy ending. The government recognized that it is absurd for someone to come into a kosher deli and demand a ham sandwich; that it is beyond absurd for that private demand to be backed with the coercive power of the state; that it is downright surreal to apply this coercive power when the customer can get the same sandwich cheaply, or even free, just a few doors down.

The question before the United States government—right now—is whether the story of our own Church institutions that serve the public, and that are threatened by the HHS mandate, will end happily too. Will our nation continue to be one committed to religious liberty and diversity? We urge, in the strongest possible terms, that the answer must be yes. We urge you, in the strongest possible terms, to answer the same way.

Thank you for your attention.

Chairman ISSA. I will note for the record that witnesses swore or affirmed, depending upon their faith.

With that, we go to Reverend Harrison.

**STATEMENT OF REVEREND DR. MATHEW C. HARRISON**

Rev. HARRISON. Thank you, Mr. Chairman. It is a pleasure to be here.

The Lutheran Church, Missouri Synod, is a body of some 6,200 congregations and 2.3 million members across the United States. We don't distribute voters list. We don't have a Washington office. We are studiously nonpartisan, so much so that we are often criticized for being quietistic. I would rather not be here, frankly. Our task is to proclaim in the words of the blessed apostle St. John: "The blood of Jesus Christ, God's son, cleanses us from all our sin." And we care for the needy.

We haven't the slightest intent to Christianize the government. Martin Luther famously quipped one time, "I would rather have a smart Turk than a stupid Christian governing me."

We confess there are two realms, the church and the state. They shouldn't be mixed. The church is governed by the word of God; the state by natural law and reason, the Constitution. We have 1,000 grade schools and high schools, 1,300 early childhood centers, 10 colleges and universities. We are a machine which produces good citizens for this country at a tremendous personal cost.

We have the Nation's only Historic Black Lutheran College in Concordia-Selma. Many of our people were alive today and walked with Dr. King 50 years ago in the march from Selma to Montgomery. We put up the first million dollars and have continued to provide finance for the Nehemiah Project in New York as it has continued over the years to provide homeownership for thousands of families, many of them headed by single women. Our agency in New Orleans, Camp Restore, rebuilt over 4,000 homes after Katrina, through the blood, sweat and tears of our volunteers.

Our Lutheran Malaria Initiative, barely begun, has touched the lives of 1.6 million people in East Africa, especially those affected by disease, women and children, and this is just the tip, the very tip, of the charitable iceberg.

I am here to express our deepest distress over the HHS provisions. We are religiously opposed to supporting abortion-causing drugs. That is in part why we maintain our own health plan. While we are grandfathered under the very narrow provisions of the HHS policy, we are deeply concerned that our consciences may soon be martyred by a few strokes on the keyboard as this administration moves us all into a single-payer system. Our direct experience in the Hosanna-Tabor case with one of our congregations gives us no comfort that this administration will be concerned to guard our free-exercise rights.

We self-insure 50,000 people. We do it well. Our workers make an average of \$43,000 a year; 17,000 teachers make much less on average. Our health plan was preparing to take significant cost-saving measures to be passed on to our workers just as this health care legislation was passed. We elected not to make those changes, incur great costs, lest we fall out of the narrow provisions of the requirement required for the grandfather clause.

While we are opposed in principle not to all forms of birth control, but only abortion-causing drugs, we stand with our friends in the Catholic Church and all others, Christian or non-Christian, under the free exercise and conscience provisions of the U.S. Constitution. Religious people determine what violates their consciences, not the Federal Government.

The conscience is a sacred thing. Our church exists because overzealous governments in northern Europe made decisions which trampled the religious convictions of our forebears. I have ancestors who served in the Revolutionary War. I have ancestors who were on the Lewis and Clark Expedition. I have ancestors who served in the War of 1812, who fought for the North in the Civil War. My 88-year-old father-in-law has recounted to me in tears many times the horrors of the Battle of the Bulge. In fact, Bud Day, the most highly decorated veteran alive, is a member of the Lutheran Church, Missouri Synod. We fought for a free conscience in this country, and we won't give it up without a fight.

To paraphrase Martin Luther, the heart and conscience has room only for God, not for God and the Federal Government. The bed is too narrow; the blanket is too short. We must obey God rather than men, and we will. Please get the Federal Government, Mr. Chairman, out of our consciences. Thank you.

Chairman ISSA. Thank you.

[The prepared statement of Rev. Harrison follows:]

February 16, 2012

Chairman Issa, Ranking Member Cummings, and other members of the committee:

Thank you for your public service to our nation, and thank you for the opportunity to share our church's concerns regarding the recent federal mandate.

The Lutheran Church—Missouri Synod is apprehensive. Our church's history is rooted in religious liberty. Our Lutheran forefathers left Europe seeking religious freedom in America, and since their arrival in 1837, Missouri Synod Lutherans have rigorously guarded these beliefs and practices. We are unconditionally committed to preserving the essential teachings of our faith, to guard our religious rights, and to act as conscience dictates as informed by faith.

The recent federal mandate has prompted our church to voice public concern about federal intervention into religious beliefs and practices. Specifically, we object to the use of drugs and procedures used to take the lives of unborn children. We oppose this mandate since it requires religious organizations to pay for and otherwise facilitate the use of such drugs by their employees—a requirement that violates our stand on the biblical teaching of the sanctity of life, which is a matter of faith and conscience.

Furthermore, we believe and teach that freedom of religion extends beyond mere houses of worship. We must be able to exercise our faith in the public square and, in response to Christ's call, demonstrate His mercy through our love and compassion for all people according to the clear teachings of Holy Scripture.

We deem this recent government mandate as an infringement upon the beliefs and practices of various religious communities. Therefore, we voice our public objections in solidarity with those who cherish their religious liberties. The decision by the U.S. Department of Health and Human Services to require virtually all health plans to comply with this mandate will have the effect of forcing many religious organizations to choose between following the letter of the law or operating within the framework of their religious tenets. We add our voice to the long list of those who have championed their God-given right to freely exercise their religious beliefs according to the dictates of their faith, and to provide compassionate care and clear Christian witness to society's most vulnerable, without government encroachment.

The Lutheran Church—Missouri Synod, a church body of sinners redeemed by the blood of Jesus, has affected the lives of millions of people by providing aid, housing, health care, spiritual care and much more. Our church has been a proponent for good in this nation—promoting education (our congregations operate the nation’s largest Protestant school system), upholding marriage, and providing people with the tools and assistance to be good citizens.

Furthermore, we follow St. Paul’s admonition to pray for governing authorities as “God’s servant for good” (Romans 13:4). Therefore, we pray for our President and those in authority. We encourage our sons and daughters to serve our nation in uniform—some achieving the highest enlisted and commissioned ranks in the armed forces. Our people have faithfully and honorably served Congress and the Senate.

We cherish our nation; yet, we grow increasingly uneasy with government intrusions into Christian conscience and practice. We stand united with our religious forefathers who sought first to serve the kingdom of God, and we will stand with all who share these concerns against the erosion of our religious liberties. May God grant us wisdom and His peace.

Rev. Dr. Matthew C. Harrison, President  
The Lutheran Church—Missouri Synod

Chairman ISSA. We now go to Dr. Mitchell.

Before you begin, pursuant to the tradition of this committee, I ask unanimous consent that Mr. Mulvaney and other Members who may join us not of this committee be allowed to sit on the dais, and, if time permits, ask questions after all members of the committee have asked. Without objection, so ordered.

Dr. Mitchell.

#### **STATEMENT OF C. BEN MITCHELL**

Mr. C. BEN MITCHELL. Good morning, Mr. Chairman and members of the committee. As the chairman said, I am C. Ben Mitchell, Graves Professor of Moral Philosophy at Union University, a Christian liberal arts university in Jackson, TN. I am also an ordained minister in the Southern Baptist Convention and serve as a consultant on biomedical and life issues for the Ethics and Religious Liberty Commission of the Southern Baptist Convention.

I am both honored and humbled to testify in support of the protection of religious freedom and liberty of conscience. I am honored because I have the opportunity and privilege of following in the legacy of my Baptist forebears, who were such stalwart defenders of religious freedom, and I am humbled because many of those forebears suffered and died so that you and I could live in a Nation with religious freedom from State coercion.

I stand in the rich legacy of individuals like Roger Williams, a one-time Baptist and founder of Providence Plantation, which became the State of Rhode Island, who declared in no uncertain terms that the violation of a person's religious conscience was nothing less than the rape of the soul. Williams understood that forcing a person through the power of the State to violate his or her own conscience is a monstrous harm.

Moreover, every American is a legatee of the freedoms secured in our Constitution partly through the influence of the Reverend John Leland, who was a Baptist minister in Massachusetts and Virginia, and who became a friend of James Madison, Thomas Jefferson and other American Founders. It was Leland who helped frame the free exercise clause of our First Amendment.

In a sermon Leland preached in 1791, he proclaimed, Every man must give an account of himself to God, and therefore every man ought to be at liberty to serve God in a way that he can best reconcile to his conscience. If government can answer in religious matters for individuals on the day of judgment, then let men be controlled by government. Otherwise, let men be free. He continued, Religion is a matter between God and individuals, religious opinions of men not being the objects of civil government nor any way under its control.

And finally, I must appeal to a 20th century colorful Texas Baptist minister, George W. Truitt, pastor of the historic First Baptist Church of Dallas. In a sermon preached from the steps of the U.S. Capitol on May 16, 1920, Reverend Truitt recounted a discussion at a London dinner between an American statesman, Dr. J.L. Curry, and a Member of the British House of Commons, John Bright. Mr. Bright asked Dr. Curry, "What distinct contribution has your America made to the science of government?" Curry responded immediately, "The doctrine of religious liberty." After a

moment's reflection, Mr. Bright offered a reply, It is a tremendous contribution.

I have two reasons for citing these historical examples. On the one hand, it is to remind us that what American University law professor Daniel Dreisbach and his coeditor Mark David Hall have called the sacred rights of conscience which we Americans enjoy were secured at an extraordinary cost. Our forebears were beaten, imprisoned, and some died for the cause of religious freedom from State coercion. On the other hand, it is to remind us that, as Truitt said later in his sermon at the Capitol, religious liberty was at least largely a Baptist achievement, and I would add, for the common good.

Every American is a beneficiary of this legacy. We are all free-loading on their sacrifice. That is why I am here to decry the contraception, abortifacient and sterilization mandate issued by the Department of Health and Human Services on January 20, 2012. The policy is an unconscionable intrusion by the State into the consciences of American citizens.

And contrary to portrayals in some of the popular media, this is not just a Catholic issue. All people of faith, and even those who claim no faith, have a stake in whether or not the government can violate the consciences of its citizenry.

Religious liberty and the freedom to obey's one's conscience is also not just a Baptist issue; it is an American issue, enshrined in our founding documents. The Obama administration's most recent so-called accommodation for religious organizations is no accommodation at all. It is a bait-and-switch scheme, in my view, of the most egregious sort.

Thank you for this opportunity.

Chairman ISSA. Thank you, Dr. Mitchell.

[The prepared statement of Mr. C. Ben Mitchell follows:]

**Testimony before the Committee on Oversight and Government Reform  
Congress of the United States  
House of Representatives**

February 16, 2012

C. Ben Mitchell, PhD

Good morning Mr. Chairman and members of the Committee. I am C. Ben Mitchell, Graves Professor of Moral Philosophy at Union University in Jackson, Tennessee and an ordained minister and former pastor in the Southern Baptist Convention. I am also a consultant on biomedical and life issues for the Ethics & Religious Liberty Commission of the Southern Baptist Convention.

I am both honored and humbled to testify in support of the protection of religious freedom and liberty of conscience. I am *honored* because I have the privilege of following in the legacy of my Baptist forebears who were such stalwart defenders of religious freedom. I am *humbled* because many of those forebears suffered and died so that you and I could live in a nation with religious freedom from state coercion.

I stand in the rich legacy of individuals like Roger Williams (c. 1603-1683), a one-time Baptist and the founder of Providence Plantation which later became the state of Rhode Island, who declared in no uncertain terms that the violation of a person's religious conscience was nothing less than "the rape of the soul."<sup>1</sup> Williams understood that forcing a person through the power of the state to violate his or her own conscience is a monstrous harm.

Moreover, every American is a legatee of the freedoms secured in our Constitution partly through the influence of the Reverend John Leland (1754-1841), who was a Baptist minister in Massachusetts and Virginia and who became a friend of James Madison, Thomas Jefferson, and other American founders. It was Leland who helped frame the free exercise clause of our First Amendment.

In a sermon Leland preached in 1791, he proclaimed, "Every man must give an account of himself to God, and therefore every man ought to be at liberty to serve God in that way that he can best reconcile it to his conscience. If government can answer for individuals at the day of judgment, let men be controlled by it [government] in religious matters; otherwise let men be free." He continued, "religion is a matter between God and individuals, religious opinions of men not being the objects of civil government nor any way under its control."<sup>2</sup>

Finally, I must appeal to a 20<sup>th</sup> century Texas Baptist minister, George W. Truett (1867-1944), pastor of the historic First Baptist Church of Dallas. In a sermon preached from the steps of the U. S. Capitol on May 16, 1920, Reverend Truett recounted a discussion at a London dinner between an American statesman, Dr. J. L. Curry, and a member of the British House of Commons, John Bright. Mr. Bright asked Dr. Curry, "What distinct contribution has your America made to the science of government?" Curry responded immediately, "The doctrine of

religious liberty.” After a moment’s reflection, Mr. Bright offered a reply, “It was a tremendous contribution.”<sup>3</sup>

I have two reasons for citing these historical examples. On the one hand, it is to remind us that what American University law professor Daniel Dreisbach and his co-editor Mark David Hall have called “the sacred rights of conscience,” which we Americans enjoy, were secured at an extraordinary cost. On the other hand, it is to remind us that as Truett said later in his sermon, religious liberty was, at least largely, “a Baptist achievement,” for the common good. Every American is a beneficiary of this legacy; we are all freeloading on their sacrifice.

That is why I am here to decry the contraception, abortifacient, and sterilization mandate issued by the Department of Health and Human Services on January 20, 2012. The policy is an unconscionable intrusion by the state into the consciences of American citizens. Contrary to portrayals in some of the popular media, this is not only a Catholic issue. All people of faith—and even those who claim no faith—have a stake in whether or not the government can violate the consciences of its citizenry. Religious liberty and the freedom to obey one’s conscience is also not just a Baptist issue. It is an American issue that is enshrined in our founding documents.

The Obama Administration’s most recent so-called “accommodation” for religious organizations is no accommodation at all. It is a bait and switch scheme of the most egregious sort.

C. Ben Mitchell, PhD, is Graves Professor of Moral Philosophy at Union University in Jackson, Tennessee.

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<sup>1</sup> Roger Williams, “The Bloody Tenent of Persecution,” in Daniel L. Dreisbach and Mark David Hall (eds), *The Sacred Right of Conscience: Selected Readings on Religious Liberty and Church-State Relations in the American Founding* (Indianapolis: Liberty Fund, 2009), p. 151.

<sup>2</sup> John Leland, “The Rights of Conscience Inalienable,” in *Political Sermons of the American Founding Era: 1730-1805*, 2 vols. Foreword by Ellis Sandoz, 2nd ed. (Indianapolis: Liberty Fund, 1998), Vol. 2. For a profile of John Leland see the PBS series, *God in America*. <http://www.pbs.org/godinamerica/people/john-leland.html>

<sup>3</sup> George W. Truett, “Baptists and Religious Liberty,” reprinted in *Baptist History and Heritage*, 33, no. 1 (Winter 1998), p. 69.

Chairman ISSA. Rabbi, if you are going to do anything on Catholic rules, just do it as well as Bishop Lori did.

Rabbi SOLOVEICHIK. No, I will stay out of that, thank you. I am also very concerned about the pork being produced here in Washington actually.

Chairman ISSA. You know, we all say we are concerned, but when it comes time to actually not serve it, it seems like it comes out.

The gentleman is recognized.

#### **STATEMENT OF RABBI MEIR SOLOVEICHIK**

Rabbi SOLOVEICHIK. Thank you, Chairman Issa, members of the committee.

In August of 1790, Moses Seixas, a leading member of the Hebrew Congregation of Newport, RI, composed a letter to then-President George Washington, who was visiting Newport. In his letter Seixas gave voice to his people's love of America and its liberties. "Deprived as we heretofore have been of the invaluable rise of free citizens," wrote Seixas, we now, with a deep sense of gratitude to the Almighty behold a government which to bigotry gives no sanction, to persecution no assistance."

Washington responded with sentiments that Jews hold dear to this day. "The citizens of the United States of America have a right to applaud themselves," wrote Washington, "for giving to mankind a policy worthy of imitation. All possess alike liberty of conscience and immunities of citizenship."

On Friday, in an op-ed in the Wall Street Journal, I joined Catholic and Protestant leaders in protesting a violation of religious freedom stemming from the Department of Health and Human Services new directive obligating religious organizations employing or serving members of other faiths to facilitate acts that those religious organizations consider violations of their religious tradition. Later that same day the administration announced what it called an accommodation. Not religious organizations, but rather insurance companies would be the ones paying for the prescriptions and procedures that a faith community may find violative of its religious tenets.

This punitive accommodation is, however, no accommodation at all. The religious organizations would still be obligated to provide employees with an insurance policy that facilitates acts violating the organization's religious tenets. Although the religious leaders of the American Catholic community communicated this on Friday evening, the administration has refused to change its position, thereby insisting that a faith community must either violate a tenet of its faith or be penalized.

What I wish to focus on this morning in my very brief remarks is the exemption to the new insurance policy requirements that the administration did carve out from the outset; to wit, exempting from the new insurance policy applications religious organizations that do not employ or serve members of other faiths. From this exemption carved out by the administration at least two important corollaries follow. First, by carving out an exemption, however narrow, the administration implicitly acknowledges that forcing employers to purchase these insurance policies may involve a violation

of religious freedom. Second, the administration implicitly assumed that those who employ or help others of a different religion are no longer acting in a religious capacity and as such are not entitled to the protection of the First Amendment.

This betrays a complete misunderstanding of the nature of religion. For Orthodox Jews, religion and tradition govern not only praying in a synagogue, or studying Torah in a Beit Midrash, or wrapping oneself in the blatant trappings of religious observance such as phylacteries. Religion and tradition also inform our conduct in the less obvious manifestations of religious belief, from feeding the hungry, to assessing medical ethics, to a million and one things in between.

Maimonides, one of Judaism's greatest Talmudic scholars and philosophers, and also a physician of considerable repute, stresses in his Code of Jewish Law that the commandment to love the Lord your God with all your heart is achieved not through cerebral contemplation only, but also requires study of the sciences and engagement in the natural world as this inspires true appreciation of the wisdom of the Almighty.

In refusing to extend religious liberty beyond the parameters of what the administration chooses to deem religious conduct, the administration denies people of faith the ability to define their religious activity. Therefore, not only does the new regulation threaten religious liberty in the narrow sense in requiring Catholic and other Christian communities to violate their religious tenets, also the administration impedes religious liberty by unilaterally redefining what it means to be religious.

Washington concluded his missive to the Hebrew Congregation of Newport by saying, "May the children of the stock of Abraham who dwell in this land continue to merit and enjoy the goodwill of the other inhabitants, while every one shall sit in safety under his own vine and fig tree and there shall be none to make him afraid."

Benefiting from two centuries of First Amendment protections in the United States, the Jewish "children of the stock of Abraham" must speak up when the liberties of conscience afforded their fellow Americans are threatened and when the definition of religion itself is being redefined by bureaucratic fiat. Thank you for the opportunity to do so this morning.

Chairman ISSA. Thank you, Rabbi.

[The prepared statement of Rabbi Soloveichik follows:]

## Testimony of Rabbi Soloveichik

Before the  
Committee on Oversight and Government Reform  
United States House of Representatives  
“Lines Crossed: Separation of Church and State. Has the Obama  
Administration Trampled on Freedom of Religion and Freedom of  
Conscience?”

In August of 1790, Moses Seixas, a leading member of the Hebrew Congregation of Newport, Rhode Island, composed a letter to then President George Washington, who was visiting Newport. In his letter, Seixas gave voice to his people’s love of America and its liberties. “Deprived as we heretofore have been of the invaluable rights of free citizens,” wrote Seixas, “we now (with a deep sense of gratitude to the Almighty disposer of all events) behold...a Government which to bigotry gives no sanction, to persecution no assistance.” Washington responded with sentiments that Jews hold dear to this day. “The Citizens of the United States of America have a right to applaud themselves,” wrote Washington, “for giving to Mankind . . . a policy worthy of imitation. All possess alike liberty of conscience and immunities of citizenship.”

On Friday, in an op ed in the Wall Street Journal, I joined Catholic and Protestant leaders in protesting a violation of religious freedom

stemming from the Department of Health and Human Services' new directive obligating religious organizations employing or serving members of other faiths to facilitate acts that those religious organizations consider violations of their religious tradition. Later the same day, the administration announced what it called an "accommodation": not religious organizations but rather insurance companies would be the ones paying for the prescriptions and procedures that a faith community may find violative of its religious tenets. This putative accommodation is, however, no accommodation at all. The religious organizations would still be obligated to provide employees with an insurance policy that facilitates acts violating the organization's religious tenets. Although the religious leaders of the American Catholic community communicated this on Friday evening, the administration has refused to change its position, thereby insisting that a faith community must either violate a tenet of its faith, or be penalized.

What I wish to focus on this morning is the exemption to the new insurance policy requirements that the administration did carve out from the outset: to wit, exempting from the new insurance policy obligations religious organizations that do not employ or serve members of other faiths. From this exemption carved out by the administration, at least two important corollaries follow. First: by carving out an exemption, however narrow, the

administration implicitly acknowledges that forcing employers to purchase these insurance policies may involve a violation of religious freedom. Second, the administration implicitly assumes that those who employ or help others of a different religion are no longer acting in a religious capacity, and as such are not entitled to the protection of the First Amendment.

This betrays a complete misunderstanding of the nature of religion. For Orthodox Jews, religion and tradition govern not only praying in a synagogue, or studying Torah in a Beit Midrash, or wrapping oneself in the blatant trappings of religious observance such as phylacteries. Religion and tradition also inform our conduct in the less obvious manifestations of religious belief, from feeding the hungry, to assessing medical ethics, to a million and one things in between. Maimonides, one of Judaism's greatest Talmudic scholars and philosophers, and also a physician of considerable repute, stresses in his Code of Jewish Law that the commandment to "Love the Lord your God with all your heart" is achieved not through cerebral contemplation only but also requires study of the sciences, and engagement in the natural world, as this inspires true appreciation of the wisdom of the Almighty. In refusing to extend religious liberty beyond the parameters of what the administration chooses to deem religious conduct, the administration denies people of faith the ability to define their religious

activity. Therefore, not only does the new regulation threaten religious liberty in the narrow sense, in requiring Catholic communities to violate their religious tenets, but also the administration impedes religious liberty by unilaterally redefining what it means to be religious.

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Chairman ISSA. And now the second Dr. Mitchell is recognized for 5 minutes.

**STATEMENT OF CRAIG MITCHELL**

Mr. CRAIG MITCHELL. I have come to you today to express my concerns not as a religious leader, but as an American. My father served for 20 years in the—

Chairman ISSA. Dr. Mitchell, you have a great voice, but I think your mic isn't on.

Mr. CRAIG MITCHELL. Okay.

Chairman ISSA. You were doing well without it, but not for the folks that have to record. Thank you.

Mr. CRAIG MITCHELL. I come to you today to express my concerns not an a religious leader, but as an American. My father served for 20 years in the U.S. Air Force. My stepfather served for 20 years in the U.S. Air Force also. I served for 12 years as an Air Force officer and obtained the rank of major in the Reserves. I swore my brother in when he became an Active Duty second lieutenant. So with all this, I have a very strong view of what it means to be an American.

I do not object to this mandate upon health care only because it is not consistent with my faith. No, I object to this mandate because it is not good for America. To be an American means that we stand for the Constitution of the United States. The more that we find out about this health care bill, the more we find out that our Constitution has been violated.

I and many others swore to defend this Constitution against all enemies, foreign and domestic, yet our elected officials have created this health care nightmare that requires every citizen to buy medical insurance, whether they want it or not. It is as if the commerce clause did not even exist.

To be an American means that we stand for religious freedom. This mandate is contrary to everything that I and every other person who wore the uniform stands for regardless of what their faith was. This is true of people who have no faith. It is inconceivable to me and many others that such a bald-faced attempt to step on the Constitution of this great country was even proposed. It is for this reason that I traveled here today to make my objections known.

I am a Southern Baptist minister and a professor of Christian ethics. As such, I know the Baptists have stood at the forefront of religious liberty. This goes all the way to Isaac Backus, Hezekiah Smith and others who pushed for the freedom of religion.

When Thomas Jefferson talked about a wall of separation between church and state, he was opposing persecution of people for their beliefs, but that is exactly what this mandate does. This mandate in the name of health care seems designed to offend those who have religiously informed moral sensibilities.

Simply put, this mandate forces people to violate their consciences. A government that will force its citizens to violate their consciences has overstepped a critical boundary. If the purpose of government is to serve its people, then this rule is wrong. The arguments used to defend this mandate are no different from the old

argument that says we had to destroy the village in order to save it.

It is the church that was responsible for the creation of hospitals. The church is also responsible for much of the development of health care. With this kind of history, it is ironic that religious organizations should have their rights crushed in the name of health care. If this is allowed to stand, then there is nothing that the U.S. Government cannot compel its citizens to do.

Explain to me how all of this is consistent with the American ideal. On Friday, the President made some changes to the mandate by having insurance companies pay for contraceptives and abortions. As an economist, I know that a tax liability on either the buyer or seller of a good will still be felt by the other. Consequently, the requirement for insurance companies to pay for this mandate will still be paid by their customers. In other words, this solution does not in any significant way dodge the religious liberty problems associated with this mandate because those in religious institutions will still have to foot at least part of the bill. As such, my religious freedoms are still being violated. If the President is allowed to have his way, I and every other American will have no recourse to address this egregious act.

As an economist, I also know that when the tax incidence is on the supplier, that the cost of the good or service increases. The President's health care bill was sold with the idea it would cut costs. We are finding thus far that it is becoming far more expensive than it was originally planned to be. This latest wrinkle only adds to the cost. In effect, it adds insult to injury, especially when you consider that most religious institutions are self-insured.

In conclusion, this rule is wrong not just for religious conservatives, it is wrong for all Americans, because it takes away the freedom of the citizens while emboldening the Federal Government to do whatever it wants. It is wrong because it violates the Constitution. It is wrong because it violates religious liberty. It is wrong because it forces people to violate their consciences. It is wrong because it is more expensive. This ruling is just plain wrong for America.

Chairman ISSA. I thank the gentleman.

[The prepared statement of Mr. Craig Mitchell follows:]

Testimony of Craig Mitchell

Greetings

I come before you today to express my concerns not as a religious leader, but as an American. My father served for twenty years in the United States Air Force. My step father served for twenty years in the United States Air Force also. I served for twelve years as a USAF officer, and attained the rank of major in the reserves. I swore my brother in when he became an active duty second lieutenant. So with all of this, I have a very strong view of what it means to be an American. I do not object to this mandate upon health care only because it is not consistent with my faith. No, I object to this mandate because it is not good for America.

To be an American means that we stand for the constitution of the U.S. The more that we find out about this health care bill, the more that we find our constitution has been violated. I and many others swore to defend this constitution against all enemies, foreign and domestic. Yet our elected officials have created this health care nightmare that requires every citizen to buy medical insurance, whether they want it or not. It is as if the commerce clause did not even exist.

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I am a Southern Baptist minister and a professor of Christian ethics. As such, I know that Baptists have stood at the forefront of religious liberty. This goes all the way to Isaac Backus, Hezekiah Smith and others who pushed for freedom of religion. When Thomas Jefferson talked about a wall of separation between church and state, he was opposing persecution of people for their beliefs, but that is exactly what this mandate does. This mandate, in the name of health care, seems designed to offend those who have religiously informed moral sensibilities. Simply put, this mandate forces people to violate their consciences. A government that will force its citizens to violate their consciences has stepped over a critical boundary. If the purpose of government is to serve its people, then this rule is wrong. The arguments used to defend this mandate are no different from the old argument that says "We had to destroy the village in order to save it."

It is the church that was responsible for the creation of hospitals. The church was also responsible for much of the development of healthcare. With this kind of history, it is ironic that the religious organizations should have their rights crushed in the name of health care. If this is

allowed to stand then there is nothing that the U.S. government cannot compel its citizens to do. Explain to me how all of this is consistent with the American ideal.

On Friday, the president made some changes to the mandate by having insurance companies pay for the contraceptives and abortions. As an economist, I know that a tax liability on either the buyer or seller of a good will still be felt by the other. Consequently the requirement for insurance companies to pay for this mandate will still be paid by their customers. In other words, this *solution* does not in any significant way dodge the religious liberty problems associated with this mandate, because those in the religious institutions will still have to foot at least part of the bill. As such, my religious freedoms are still being violated. If the president is allowed to have his way, I and every other American will have no recourse to address egregious act.

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In conclusion, this rule is wrong not just for religious conservatives, it is wrong for all Americans, because it takes away the freedom of the citizens while emboldening the federal government to do whatever it wants. It is wrong because it violates the constitution. It is wrong because it violates religious liberty. It is wrong because it forces people to violate their consciences. It is wrong because it is more expensive. This ruling is just plain wrong for America

Chairman ISSA. I will note that we are now joined by the gentlelady from the Third District of Connecticut, Ms. DeLauro, who also will be allowed to ask questions after all others.

I will note for the record that I don't expect that to be able to happen on the first panel, but we will certainly, at a minimum, make it available on the second panel.

Thank you. Pleasure having you.

I now recognize myself for 5 minutes for a round of questioning.

Both in a letter I received yesterday and in his opening statement, the ranking member read or paraphrased the following paragraph: "As the son of two ministers from a small church in Baltimore, I completely understand the position of the faith-based community on this issue. I know both through my faith and my legal training that we have an obligation as a Nation to make accommodations"—I will now pause. He goes on to say, "where appropriate, to avoid undue interference with the practice of religion in this country."

For each of you, if I simply strike from this paragraph "where appropriate," obviously determined by the government, and "undue," obviously determined by the government, and I read, "to make accommodations to avoid interference with the practice of religion in this country," is that paragraph and that statement consistent with each of your views?

I see all yeses. So is it fair to say, then, that what we are debating here is government's decision that it can determine on behalf of people of faith and conscience the question of "where appropriate" and what is "undue?"

Seeing also yeses, if, in fact, this stands—would you put that poster up? Would you bring out the poster of our President John F. Kennedy?

John F. Kennedy said, "I would not look with favor upon a President working to subvert the First Amendment's guarantee of religious liberty."

For each of you, or any of you, do you believe that, in fact, we have a President's administration, not him personally, who is working to subvert the guarantees of religious liberty?

Rabbi.

Rabbi SOLOVEICHIK. Yes, absolutely, that is what the current policy does, in effect. What their motivation is, I can't speak for that, but there is no question that the current policy and intent announced by the Department of Health and Human Services does restrict and does effectively damage religious liberty in this country.

Chairman ISSA. Let me ask a question, because each of you has expressed either opposition to the rule on the merits of what it does or opposition because of how it affects future decisions of religious freedom. Let me go briefly into the question of the actual health items it affects.

I was brought up to believe that government in this country is separate, clearly separate, from our faith and that often government does things which in our faith we object to, but that that is, in fact, the part of "give Caesar his due" that we all grew up being taught in one way or another.

So, in fact, if government were to provide these services over our personal objections, if government were to take our tax money and

fund that, something that we have a heated discussion about all the time, would you change your position, not from objecting to the particular funding, but to the question of whether or not it is, in fact, impinging on or infringing your liberty and your ability to teach your faith and to practice it?

Yes, Bishop.

Bishop LORI. Government already does supply those things with our tax dollars, but what we are objecting to is that government is now reaching into the internal governance of our religious bodies and requiring us, directly or indirectly, to use our own resources for it. Because there is no such thing as free.

Chairman ISSA. So, for all of you—and when you get to lead this off, it is sometimes easy and sometimes hard, but I want to set the stage, I think, for both sides.

The fact is, today, what many of the members of the minority talked about—you know, women's rights, reproductive rights, safety, health—the fact is the government spends your tax dollars involuntarily in many cases to do things that are along these lines, either for the poor and indigent or for others, and although religiously you may object to it, you recognize that that is separate from telling you you must participate directly through your activities.

Is that really what we are talking about here today?

Mr. C. BEN MITCHELL. Definitely.

Chairman ISSA. Reverend Harrison.

Rev. HARRISON. Precisely. And it has been said that Caesar must be given no less than what is Caesar's, but no more either. And you hit the nail right on the head. We participate by paying our taxes in every aspect of society. We participate communally, etc. But this provision is draconian, in that it invades the realm of our conscience, and it becomes impossible for us.

Chairman ISSA. Thank you.

My time has expired, but, Dr. Mitchell, you may answer briefly.

Mr. CRAIG MITCHELL. Yeah, especially when you consider that most religious organizations are self-insured, we have our own insurance agencies. And forcing us to use our own money to do this? That is really getting into it.

Chairman ISSA. Rabbi, did you have anything to add?

Rabbi SOLOVEICHIK. I think that is exactly right, Chairman Issa. And the President's spokesman recently, when speaking about this subject, said that what their concern is is that they don't want religious employers or organizations restricting access to specific prescriptions, etc. But, of course, those who have a religious objection are not seeking in America to restrict their access to it. What they are seeking is the freedom in their own right not to facilitate something that violates the tenets of their own faith.

Chairman ISSA. Thank you.

The gentleman from—the ranking member is recognized for 5 minutes.

Mr. CUMMINGS. Bishop Lori, I want to thank you—I want to thank all of you for being here. And let me say that I am very thankful for the service of your organization and other Catholic groups that provide so much help to the poorest among us. So I thank you.

On today's topic, I would like to ask about all the other Catholic entities that praised the administration for their decision last week to allow them to operate consistently with their faith and the law, because people are becoming confused. Some still have questions such as how entities that self-insure will be treated, but they all commended the administration. Unlike you, they believe these remaining issues can be worked out.

For example, the Catholic Health Association represents the largest group of nonprofit health care providers. They stated that they were, "very pleased with the White House announcement that a resolution has been reached that protects the religious liberty and conscience rights of Catholic institutions."

Similarly, Catholic Charities USA, the largest private network of social service organizations in the United States, stated that it, "welcomes the administration's attempt to meet the concerns of the religious community."

Catholics United is a nonprofit organization dedicated to promoting the Catholic social tradition. They called the White House plan, "a win-win solution," and stated that, "President Obama has shown us that he is willing to rise above the partisan fray to deliver an actual policy solution that both meets the health care needs of all employees and respects the religious liberty of Catholic institutions."

And I know we can all differ in our opinions, but, Bishop Lori, do you disagree with all of these other Catholic leaders who believe the administration has struck the right balance?

Bishop LORI. Well, thank you very much for the opportunity to comment on that.

First of all, when the announcement was made last Friday, it came upon certainly the Bishops' Conference of a sudden. There was no prior consultation, it was not given to us in writing, and it was told to us not long before it was announced. When we first heard it ourselves, we wondered if there might not also be a glimmer of hope, but upon further analysis within that same day we immediately began to see problems.

Catholic Health Association put out its own statement, for which it is responsible. Catholic Health Association does not speak for the Church as a whole. The Catholic Bishops speak for the Church as a whole. It is a lobbying group, it is a trade association, it is not the Catholic Church as such. And it is instructive that as time has passed on and there has been further opportunity for analysis, both at the level of morality and at the level of policy, there are questions that Catholic Health Association itself is now rightfully asking.

Catholic Charities USA is in the same position. While it initially offered a positive statement, it would seem as time goes on it has also recognized that there are very serious problems at the level of principle and at the level of practicality, and they have issued a statement indicating their solidarity with the Bishops.

I don't know much about Catholic United except it doesn't have any particular standing in the Church.

Mr. CUMMINGS. A few minutes ago, the chairman asked a question like—I think I got it right—did you all believe that the Obama

administration was truly—do you really believe that it is trying to subvert religion?

I think the rabbi did answer that. Did you answer that? Do you really believe that?

Chairman ISSA. Will the gentleman yield?

Mr. CUMMINGS. Yes.

Rabbi SOLOVEICHIK. The word “subvert”——

Mr. CUMMINGS. Well, why don’t you correct me? Tell me what you asked. You held up the sign. Just tell me what you asked. I just want to ask the question that you asked. I am asking him specifically.

Chairman ISSA. We will ask unanimous consent for an additional 1 minute.

Mr. CUMMINGS. I am not—I said very clearly—I wasn’t trying to confuse anybody. The rabbi answered the question.

Do you remember, Rabbi? What was the question?

Chairman ISSA. Just for the record, Rabbi, I said that President John F. Kennedy said, “I would not look with favor upon a President working to subvert the First Amendment’s guarantee of religious liberty.” And then I asked all about John F. Kennedy’s statement. And the gentleman was closer to right than I remembered.

Mr. CUMMINGS. Okay.

Rabbi SOLOVEICHIK. If I could just speak to that for one moment, and I just—I did not say, Congressman Cummings, that the President or the administration is trying to subvert religious freedom. What I said was that the policy, in effect, damages religious freedom. I made no statement at all about what they are intending to do. That is not—I am not saying anything about that.

Mr. CUMMINGS. And what about you, Rabbi? I mean, do you really believe that?

Bishop LORI. You mean myself, Congressman?

Mr. CUMMINGS. Yeah, you. Yes, sir.

Bishop LORI. I believe there are serious challenges, not just with the HHS rule, but also we saw serious challenges with Hosanna-Tabor and we saw serious challenges in an attempt by HHS to deny contracts to Migration and Refugee Services and Catholic Relief Services because those organizations, in fidelity to the Church, would not provide the so-called full range of reproductive services.

We have an ad hoc committee on religious liberty that is part of the Bishop’ Conference because we have massive concerns about religious liberty at the State and Federal level—massive concerns.

Mr. CUMMINGS. If I remember, we had a hearing on that, on these contracts that you just talked about, and it showed that—in the hearing, it came out that the Catholic Church—I guess I am saying this right—received millions upon millions of dollars in all kinds of contracts. You are familiar with that, right?

Bishop LORI. Mr. Congressman, we don’t get a handout.

Mr. CUMMINGS. I never said that.

Bishop LORI. We contract for services, and we deliver, and we bring to those services some moral convictions. And we shouldn’t be at a disadvantage because we bring some moral convictions to the table. We also bring the generosity of the Catholic people and we bring volunteers. When you contract with the Church, you get a bang for your buck.

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

Chairman ISSA. Thank you.

We now recognize the gentleman from North Carolina, Mr. McHenry, for 5 minutes.

Mr. MCHENRY. I thank you, Mr. Chairman.

This is a very simple and broad question for the whole panel. It is a very simple question. Is this ruling by HHS—do you view this as an issue of contraception and abortifacients or an issue of religious freedom and conscience protections?

Bishop Lori? And we will certainly go down the row.

Bishop LORI. We view it as an issue of religious liberty. We view it first of all and primarily at the level of principle. It is a question of government reaching in to the internal governance of religious bodies and making a requirement contrary to church teaching.

Mr. MCHENRY. Thank you, sir.

Reverend Harrison.

Rev. HARRISON. Yes, we view it completely as a matter of religious freedom. We have never gone on record opposing all forms of birth control. We have only gone on record saying that we have moral objections to abortifacients, abortion-causing medications.

So we are deeply concerned that this is a conscience issue. If we are forced in situations at our universities and other institutions to act in ways fundamentally contrary to our religious convictions, it has a disparaging effect on our institutions. It denudes us of the very faith that has driven us into those situations where we care for people in need.

Mr. MCHENRY. Thank you.

Dr. Mitchell.

Mr. C. BEN MITCHELL. It is completely a religious-liberty issue for us, a freedom-of-conscience issue for us. There is an erosion of trust, I must say, among Baptists, or many Baptists, and the administration. And as we now are sort of experiencing the warm winds of an Arab Spring in the Middle East, we worry seriously—it is a solemn issue for us—we worry seriously that we may be entering the first chilling days of our winter of discontent.

Mr. MCHENRY. Rabbi.

Rabbi SOLOVEICHIK. Yes, Congressman, this is absolutely an issue of religious freedom and only of religious freedom.

If there are members of this committee or of Congress or of the executive branch who are concerned about access to contraception, they can seek through legislation or otherwise to ensure greater access to that. That can be debated in Congress, the Members of Congress can vote on that, etc. And they are absolutely entitled and able to do that as Members of Congress under the powers granted to them by the Constitution.

What they cannot do—and that is why we are here today—is to achieve this end by trampling on the religious freedoms and the liberty of conscience of Americans. And they can't do that because that would be a violation of the Constitution that both Members of Congress and of the executive branch have sworn to uphold and protect.

Mr. MCHENRY. Thank you, sir.

Dr. Mitchell.

Mr. CRAIG MITCHELL. Yes, this is clearly an issue of religious liberty, and it is one that I couldn't have imagined coming. And I think to see it as anything else is to completely miss the real importance of this issue. And so that is why I am here.

Mr. MCHENRY. Thank you.

Thank you for answering that question. A lot of folks, when I pose this as a question of access to contraception, it is a deeper question of conscience protection and compelling an individual not simply to not do something, but compelling an individual to purchase something which they find morally objectionable and using the force of the State to compel them to do that.

There is an additional question. You know, there is a distinction within this rule about whether or not you are a religious institution primarily, serving people only of your faith, or are you open to others.

So, Bishop Lori, there is a significant amount that the Catholic Church does not just in Washington, DC, or Connecticut but across the country, so why does—does the Catholic Church only serve Catholics?

Bishop LORI. No, it does not. It is—

Mr. MCHENRY. Why?

Bishop LORI. We serve—

Mr. MCHENRY. And with all due respect. I am Catholic, and for me to—

Bishop LORI. Oh, no.

Mr. MCHENRY [continuing]. Speak to a bishop like this is a little bit of a challenge.

Chairman ISSA. It is your immortal soul you are risking.

Bishop LORI. Well—

Rev. HARRISON. There is room over here.

Mr. MCHENRY. Thank you, Reverend.

Bishop LORI. You know, it all started when the Lord said, "Go and baptise all nations," and that kind of put us on a course of being out there. We serve people of all faiths and none, not because they are Catholic but because we are Catholic and because our faith prompts us to do it. It flows from what we believe, how we worship, and how we are to live. And so, we regard, for example, our Catholic Charities as really an outgrowth of our discipleship of the Lord and our communion with another in the Lord, not a side business.

Mr. MCHENRY. Thank you.

And thank you, Mr. Chairman.

Chairman ISSA. Thank you.

I might note, just to be ecumenical, that Beth Israel provides Sunday food for Father Joe Carroll's food bank in San Diego, just to make sure that all days are covered.

With that, we recognize the former chairman of the full committee, Mr. Towns, for 5 minutes.

Mr. TOWNS. Thank you very much, Mr. Chairman.

I would like to ask unanimous consent that I be allowed to submit testimony from the National Health Law Program for the record.

Chairman ISSA. I am reserving—you said testimony. Is it a written statement?

Mr. TOWNS. It is a written statement, yes.  
Chairman ISSA. Without objection, so ordered.  
[The information referred to follows:]



**TESTIMONY BEFORE THE COMMITTEE ON OVERSIGHT & GOVERNMENT  
REFORM**

**FOR THE HEARING ENTITLED "LINES CROSSED: SEPARATION OF CHURCH AND STATE.  
HAS THE OBAMA ADMINISTRATION TRAMPLED ON FREEDOM OF RELIGION AND FREEDOM OF  
CONSCIENCE?"**

**February 16, 2012**

**BY THE**

**NATIONAL HEALTH LAW PROGRAM**

The National Health Law Program ("NHeLP") submits this testimony to the Committee on Oversight & Government Reform. NHeLP is a public interest law firm working to advance access to quality health care and protect the legal rights of low-income and underserved people. NHeLP provides technical support to direct legal services programs, community-based organizations, the private bar, providers, and individuals who work to preserve a health care safety net for the millions of uninsured or underinsured low-income people. Consistent with this mission, NHeLP works to ensure that all people in the United States—including women—have access to preventive health services. The Patient Protection and Affordable Care Act ("the ACA") similarly recognizes that preventive health services are critical to individual and community health, and that cost is often a barrier to accessing needed preventive services. The ACA also acknowledges the critical role that a woman's health plays in the health and well-being of her family and her community, as well as women's disproportionately lower earnings, by explicitly requiring that women's preventive health services be covered without cost-sharing.

Healthcare coverage decisions should be based on accepted standards of medical care recognized by the various professional medical academies. "Standards of care" are practices that are medically appropriate, and the services that any practitioner under the circumstances should be expected to render. Every person who enters a doctor's office or hospital expects that the care he or she receives will be based on medical evidence and meet accepted medical guidelines – in other words, that care will comport with medical standards of care. Refusal clauses and denials of care, however, violate these standards. They undermine standards of care by allowing or requiring health care professionals and institutions to abrogate their responsibility to deliver services and information that would otherwise be required by generally accepted practice guidelines. Ultimately, refusal clauses and institutional denials of care conflict with professionally developed and accepted medical standards of care and have adverse health consequences for patients. NHeLP's publication, *Health Care Refusals: Undermining Quality Care for Women* (Appendix A), is an extensive analysis of medical standards of care for

women's health and the impact of refusal clauses and institutional denials of care on health access and quality.<sup>1</sup>

NHeLP's testimony addresses issues raised by the question presented by the Committee on Oversight & Government Reform. NHeLP strongly supports the Department of Health and Human Services' (HHS) requirement that most new health insurance plans cover women's preventive health services, including contraception, without cost-sharing. The decision significantly benefits millions of women who are currently insured or who will obtain health insurance through the ACA—and one that will ensure that most women have access to contraception without expensive co-pays, saving some women up to \$600 per year. The Administration recently adopted a religious employer exemption that would allow certain religious employers to refuse to cover contraception, as they would otherwise be required to do. The Administration has also announced that it will develop rules that will ensure that women can obtain contraceptive coverage at no additional cost while also allowing non-profit religiously-affiliated employers, such as hospitals or universities, to refuse to provide contraceptive coverage. Despite these accommodations, the drive to deprive women of the right to obtain affordable birth control continues. NHeLP strongly opposes efforts to undermine the health and autonomy of women. Every woman should be able to make her own decisions about whether or when to have children based on her own beliefs and needs. Employers and insurance companies should not be able to override the health care decisions of individual women.

#### A. THE REQUIREMENT TO COVER CONTRACEPTIVES AS A COMPONENT OF PREVENTIVE CARE IS EVIDENCE-BASED.

The ACA requires group health plans and health insurance issuers to cover certain preventive services without cost-sharing.<sup>2</sup> Among other things, the ACA requires new group health plans and health insurance issuers to cover such additional women's health preventive care and screenings as provided for in guidelines supported by HHS.<sup>3</sup> By doing so, the ACA recognizes that women have unique reproductive and gender specific health needs, disproportionately lower incomes, and disproportionately higher out-of-pocket health care expenses. HHS commissioned the independent Institute of Medicine of the National Academies ("IOM") to conduct a scientific review and provide recommendations on specific preventive measures that meet women's unique health needs and help keep women healthy. HHS charged the IOM with convening a committee to determine the preventive services necessary to ensure women's health and well-being.<sup>4</sup>

<sup>1</sup> Susan Berke Fogel & Tracy A. Weitz, *Health Care Refusals: Undermining Quality Care for Women*, Nat'l Health Law Program (2010),

[http://www.healthlaw.org/images/stories/Health\\_Care\\_Refusals\\_Undermining\\_Quality\\_Care\\_for\\_Women.pdf](http://www.healthlaw.org/images/stories/Health_Care_Refusals_Undermining_Quality_Care_for_Women.pdf).

<sup>2</sup> Patient Protection and Affordable Care Act ("ACA"), Pub. L. No. 111-148, 124 Stat. 119 (2010), amended by Health Care and Education Reconciliation Act, Pub. L. No. 111-152, 124 Stat. 1029 (2010), § 2713(a), 42 U.S.C. § 300gg-13.

<sup>3</sup> ACA § 2713(a)(4), 42 U.S.C. § 300gg-13.

<sup>4</sup> Inst. of Medicine of the Nat'l Academies, *Clinical Preventive Services for Women: Closing the Gaps* (2011), [www.iom.edu/-/media/Files/Report%20Files/2011/Clinical-Preventive-Services-for-Women-Closing-the-Gaps/preventiveservicesforwomenreportbrief\\_updated2.pdf](http://www.iom.edu/-/media/Files/Report%20Files/2011/Clinical-Preventive-Services-for-Women-Closing-the-Gaps/preventiveservicesforwomenreportbrief_updated2.pdf).

To this end, the IOM convened a committee of 16 eminent researchers and practitioners to serve on the Committee on Preventive Services for Women.<sup>5</sup> The Committee met five times in six months.<sup>6</sup> It reviewed existing guidelines, gathered and reviewed evidence and literature, and considered public comments.<sup>7</sup> In reaching its recommendations the IOM also relied on the input of independent physicians, nurses, scientists, and other experts. With respect to women, the IOM identified gaps in the coverage for preventive services not already addressed by the ACA, including services recommended by the United States Preventive Services Task Force, the Bright Futures recommendations for adolescents from the American Academy of Pediatrics, and vaccinations specified by the Centers for Disease Control and Prevention's Advisory Committee on Immunization Practices. The IOM recommended that, among other things, women receive coverage for all United States Food and Drug Administration ("FDA")-approved methods of contraception free of cost-sharing because: (1) pregnancy affects a broad population; (2) pregnancy prevention has a large potential impact on health and well-being; and (3) the quality and strength of the evidence is supportive of the recommendation to provide contraceptive coverage free of cost-sharing.<sup>8</sup> HHS recently adopted the eight recommendations submitted by the IOM, which include the recommendation that women receive coverage for all FDA-approved methods of contraception free of cost-sharing.<sup>9</sup> Requiring coverage of all eight preventive services recommended by the IOM, including coverage of all-FDA approved methods of contraception, is good medical and economic policy.

**B. CONTRACEPTION EFFECTIVELY PREVENTS UNINTENDED PREGNANCIES, AND WOMEN NEED TO BE ABLE TO SELECT THE METHOD THAT IS MOST APPROPRIATE.**

Family planning is an essential preventive service for the health of women and families. In 2008, there were sixty-six million women of reproductive age (ages 13-44) in the United States.<sup>10</sup> Over half of these women—thirty-six million—were in need of contraceptive services and supplies because they were sexually active with a male, capable of becoming pregnant, and neither pregnant nor seeking to become pregnant.<sup>11</sup> Each year, nearly half of the pregnancies in the United States are unintended—meaning they were either unwanted or mistimed.<sup>12</sup> Forty-two percent of unintended pregnancies end in abortion.<sup>13</sup> By age 45, more than half of all women in the United States will have experienced an unintended pregnancy, and four in ten will have had

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> U.S. Dep't of Health & Human Servs., Health Res. & Servs. Admin., Women's Preventive Services: Required Health Plan Coverage Guidelines, <http://www.hrsa.gov/womensguidelines>.

<sup>10</sup> Jennifer J. Frost, Stanley K. Henshaw & Adam Sonfield, Guttmacher Inst., *Contraceptive Needs and Services: National and State Data, 2008 Update 3* (2010), <http://www.guttmacher.org/pubs/wi/contraceptive-needs-2008.pdf>.

<sup>11</sup> *Id.*

<sup>12</sup> Lawrence B. Finer & Stanley K. Henshaw, *Disparities in Rates of Unintended Pregnancy in the United States, 1994 and 2001*, *Perspectives on Sexual & Reprod. Health*, Vol. 38, No. 2 (2006), <http://www.guttmacher.org/pubs/psrh/full/3809006.pdf>; Guttmacher Inst., *Facts on Induced Abortion in the United States* (Aug. 2011), [www.agi-usa.org/pubs/fb\\_induced\\_abortion.html](http://www.agi-usa.org/pubs/fb_induced_abortion.html).

<sup>13</sup> Inst. of Medicine of the Nat'l Academies, *supra* note 4.

an abortion.<sup>14</sup> Unintended pregnancy disproportionately impacts women of color: sixty-seven percent of pregnancies among African American women, fifty-three percent of pregnancies among Latina women, and forty percent of pregnancies among white women are unintended.<sup>15</sup> A woman has an eighty-five percent chance of an unintended pregnancy if she uses no method of contraception.<sup>16</sup> More than fifty percent of unintended pregnancies in the United States occur among the sixteen percent of women at risk for unintended pregnancy who are not using any contraceptive method.<sup>17</sup> According to the Guttmacher Institute, in the United States publicly funded family planning services and supplies alone help women avoid approximately 1.5 million unintended pregnancies each year.<sup>18</sup> If these services were not provided in 2008, unintended pregnancy rates would have been 47 percent higher, and the abortion rate would have been 50 percent higher.<sup>19</sup> Increased access to, and use of, contraceptive information and services could reduce the rate of these unwanted pregnancies.

However, as the IOM report recognized, not all contraceptive methods are right for every woman, and access to the full range of pregnancy prevention options allows a woman to choose the most effective method for her lifestyle and health status. Current methods for preventing pregnancy include hormonal contraceptives (such as pills, patches, rings, injectables, implants, and emergency contraception), barrier methods (such as male and female condoms, cervical caps, contraceptive sponges, and diaphragms), intrauterine contraception, and male and female sterilization. As the IOM reported, female sterilization, intrauterine contraception, and contraceptive implants have failure rates of less than one percent.<sup>20</sup> Injectable and oral contraceptives have failure rates of seven and nine percent, largely due to misuse.<sup>21</sup> Failure rates for barrier methods are higher.<sup>22</sup>

### C. CONTRACEPTIVES ARE WIDELY USED IN THE UNITED STATES.

Most sexually active women in the United States use contraception to prevent pregnancy. Contraceptive use is nearly universal in women who are sexually active with a male partner: more than 99 percent of women 15–44 years of age who have ever had sexual intercourse with a male have used at least one contraceptive method.<sup>23</sup> This is true for nearly all women, of all

<sup>14</sup> Guttmacher Inst., *Fact Sheet: Facts on Induced Abortion in the United States* (Aug. 2011), [http://www.guttmacher.org/pubs/fb\\_induced\\_abortion.html](http://www.guttmacher.org/pubs/fb_induced_abortion.html).

<sup>15</sup> Lawrence B. Finer & Mia R. Zolna, *Unintended Pregnancy in the United States: Incidence and Disparities*, 2006, *Contraception*, Vol. 84, No. 5 (2011).

<sup>16</sup> *Id.*

<sup>17</sup> Rachel Benson Gold *et al.*, Guttmacher Inst., *Next Steps for America's Family Planning Program: Leveraging the Potential of Medicaid and Title X in an Evolving Health Care System* (2009),

<http://www.guttmacher.org/pubs/NextSteps.pdf>.

<sup>18</sup> Jennifer J. Frost, Stanley K. Henshaw & Adam Sonfield, Guttmacher Inst., *Contraceptive Needs and Services: National and State Data, 2008 Update 5* (2010), <http://www.guttmacher.org/pubs/w/in/contraceptive-needs-2008.pdf>.

<sup>19</sup> *Id.*

<sup>20</sup> Inst. of Medicine of the Nat'l Academies, *supra* note 4.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Williams D. Mosher & Jo Jones, *Use of Contraception in the United States: 1982–2008*, Nat'l Ctr. for Health Statistics, Vital and Health Statistics, Series 23, No. 29 (2010).

religious denominations.<sup>24</sup> Indeed, the overwhelming majority of sexually active women of all denominations who do not want to become pregnant are using a contraceptive method.<sup>25</sup> Approximately 98 percent of sexually active Catholic women have used contraceptive methods banned by the Catholic Church.<sup>26</sup> Even among those Catholic women who attend church once a month or more, only two percent rely on natural family planning methods to prevent unintended pregnancies.<sup>27</sup> Consistent with the data establishing that there is nearly universal use of birth control, a recent poll by Public Policy Polling (“PPP”) shows that fifty-six percent of voters, and fifty-three percent of Catholic voters, support the decision to require plans to cover birth control with cost-sharing.<sup>28</sup> Further, according to the PPP poll, fifty-seven of all voters, and fifty-three percent of Catholic voters, think that women employed by Catholic hospitals and universities have the same rights to contraceptive coverage as other women.<sup>29</sup>

#### D. COST PREVENTS WOMEN FROM ACCESSING CONTRACEPTIVE INFORMATION AND SERVICES.

One of the major barriers to consistent contraceptive use for women - who are also disproportionately low-income - is the high out-of-pocket cost that ranges from \$30 to \$50 per month. Unintended pregnancy rates are highest among poor and low-income women, women aged 18-24, cohabiting women and minority women.<sup>30</sup> Low-income women have higher rates of unintended pregnancy as compared to higher-income women.<sup>31</sup> Low-income women are the least likely to have the resources to obtain reliable methods of family planning, and yet, they are most likely to be impacted negatively by unintended pregnancy.<sup>32</sup> It is therefore not surprising that poor women’s higher rate of unintended pregnancy results in their having higher rates of abortions and unplanned births.<sup>33</sup>

Increased use of longer-acting, reversible contraceptive methods, which have lower failure rates, could further help women reduce unintended pregnancy. These more effective methods of contraception, however, also have the most up-front costs, which put them outside of the reach of many women.<sup>34</sup> In 2008, for example, only 5.5 percent of women using

<sup>24</sup> Rachel K. Jones & Joerg Dreweke, Guttmacher Inst., *Countering Conventional Wisdom: New Evidence on Religion and Contraceptive Use* (2011), <http://www.guttmacher.org/pubs/Religion-and-Contraceptive-Use.pdf>.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> Pub. Policy Research Inst., *February PRRI Religion & Politics Tracking Poll* (Feb. 2012),

<http://publicreligion.org/research/2012/02/january-tracking-poll-2012/>.

<sup>29</sup> *Id.*

<sup>30</sup> Lawrence B. Finer & Kathryn Kost, *Unintended Pregnancy Rates at the State Level*, *Perspectives on Sexual & Reprod. Health* Vol. 43, No. 2 (2011).

<sup>31</sup> Lawrence B. Finer & Stanley K. Henshaw, *supra* note 12.

<sup>32</sup> Sheila D. Rustgi, Michelle M. Doty & Sara R. Collins, The Commonwealth Fund, *Women at Risk: Why Many Women are Forgoing Needed Health Care* (2009),

[http://www.commonwealthfund.org/-/media/Files/Publications/Issue%20Brief/2009/May/Women%20at%20Risk/PDF\\_1262\\_Rustgi\\_women\\_at\\_risk\\_issue\\_brief\\_Final.pdf](http://www.commonwealthfund.org/-/media/Files/Publications/Issue%20Brief/2009/May/Women%20at%20Risk/PDF_1262_Rustgi_women_at_risk_issue_brief_Final.pdf).

<sup>33</sup> Lawrence B. Finer & Mia R. Zolna, *supra* note 15.

<sup>34</sup> Inst. of Medicine of the Nat’l Academies, *supra* note 4.

contraception chose the more effective and longer-term methods.<sup>35</sup> As the IOM recognized, the “elimination of cost sharing for contraception . . . could greatly increase its use, including use of the more effective and longer-acting methods, especially among poor and low-income women most at risk for unintended pregnancy.”<sup>36</sup> In this regard, the California Kaiser Foundation Health Plan’s experience is informative. The California Kaiser Foundation Health Plan eliminated copayments for the most effective contraceptive methods in 2002.<sup>37</sup> Prior to the change, users paid up to \$300 for 5 years of use; after elimination of the co-payment, use of these methods increased by 137 percent.<sup>38</sup>

#### E. PREVAILING MEDICAL STANDARDS OF CARE REQUIRE THAT WOMEN HAVE ACCESS TO CONTRACEPTIVE INFORMATION AND SERVICES.

The government should make *health care coverage decisions* based on scientific evidence and good economic policy, not on the religious and moral beliefs of some institutions. Health care refusals and denials of care, also known as “conscience” clauses, are based on ideological and political justifications that have no basis in scientific evidence, good medical practice, or patient needs. These policies violate the essential principles of modern health care delivery: evidence-based practice, patient centeredness, and prevention. “Standards of care” are practices that are medically necessary and the services that any practitioner under the circumstances should be expected to render. Refusal clauses and denials of care undermine standards of care by allowing or requiring health care professionals and/or institutions to abrogate their responsibility to provide services and information that would otherwise be required by generally accepted practice guidelines. Refusal clauses and denials of care, such as Senate Bill 2043, called the “Religious Freedom Restoration Act of 2012,” allow employers and insurers companies to “opt-out” of meeting medical standards of care.

Women consider a number of factors in determining whether to become or remain pregnant, including: age, educational goals, economic situation, the presence of a partner and/or other children, medical condition, mental health, and whether they are taking medications that are contraindicated for pregnancy. For example, a number of commonly prescribed pharmaceuticals are known to cause impairments in the developing fetus or to create adverse health conditions if a woman becomes pregnant while taking them. Approximately 11.7 million prescriptions for drugs the FDA has categorized as Pregnancy Classes D (there is evidence of fetal harm, but the potential may be acceptable despite the harm) or X (contraindicated in women who are or may become pregnant) are filled by significant numbers of women of reproductive age each year.<sup>39</sup> Pregnancy for women taking these drugs carries risk for maternal health and/or

<sup>35</sup> Jennifer J. Frost & Jacqueline E. Darroch, *Factors Associated with Contraceptive Choice and Inconsistent Method Use*, *Perspectives on Sexual & Reprod. Health*, Vol. 40, No. 2 (2008).

<sup>36</sup> Inst. of Medicine of the Nat’l Academies, *supra* note 4.

<sup>37</sup> Kelly Cleland et al., *Family Planning as Cost-Saving Preventive Health Service*, *New Eng. J. Med.*, Vol. 37., No. 1 (April 2011), <http://healthpolicyandreform.nejm.org/?p=14266>.

<sup>38</sup> *Id.*

<sup>39</sup> Eleanor B. Schwarz et al., *Documentation of Contraception and Pregnancy When Prescribing Potentially Teratogenic Medications for Reproductive-Age Women*, *Annals of Internal Med.*, Vol. 147, No. 6 (2007); Eleanor B. Schwarz et al., *Prescription of Teratogenic Medications in United States Ambulatory Practices*, *Am. J. of Med.*, Vol. 118 (2005).

fetal health.<sup>40</sup> Women taking these drugs who might be at risk for pregnancy are advised to use a reliable form of contraception to prevent pregnancy.<sup>41</sup>

Unintended pregnancy is associated with maternal morbidity and risky health behaviors. The World Health Organization recommends that pregnancies should be spaced at least two years apart.<sup>42</sup> Pregnancy spacing allows the woman's body to recover from the pregnancy. Further, if a woman becomes pregnant while breastfeeding, the health of both her baby and fetus may be compromised as her body shares nutrients between them. According to the American College of Obstetricians and Gynecologists, women who become pregnant less than six months after their previous pregnancy are 70 percent more likely to have membranes rupture prematurely, and are at a significantly higher risk of other complications.<sup>43</sup> Recognizing the importance of family planning, HHS included family planning as a focus area of the Healthy People 2020 health promotion objectives.<sup>44</sup> Healthy People 2020 aims to increase the proportion of intended pregnancies and to improve pregnancy spacing. Specific indicators of goal achievement include increasing: (1) intended pregnancies from 51 percent to 61 percent; (2) pregnancy spacing to 18 months; (3) the proportion of women at risk for unintended pregnancy who use contraceptives to 100 percent; and (4) the proportion of teens who use contraceptive methods that both prevent pregnancy and prevent sexually transmitted disease.<sup>45</sup>

Refusal clauses increase health disparities by imposing significant burdens on the health and well-being of affected women and their families. These are burdens that fall disproportionately and most harshly on low-income women, severely impacting their health outcomes and their ability to give informed consent for medical care. Low income women, and low income women of color already experience severe health disparities in reproductive health, maternal health outcomes, and birth outcomes. Cardiovascular disease, lupus, and diabetes, for example, are chronic diseases that disproportionately impact women of color. The incidence rate for lupus is three times higher for African American women than for Caucasian women.<sup>46</sup> Similarly, although an estimated 7.8 percent of Americans have diabetes, the prevalence rate (the number of cases in a population at a specific time) is higher for women of color in all age groups, with obesity and family history being significant risk factors for Type II diabetes.<sup>47</sup> Women who

<sup>40</sup> *Id.*; David L. Eisenberg et al., *Providing Contraception for Women Taking Potentially Teratogenic Medications: A Survey of Internal Medicine Physicians' Knowledge, Attitudes and Barriers*, *J. Gen. Internal Med.*, Vol. 25, No. 4 (2010).

<sup>41</sup> *Id.*

<sup>42</sup> Cicley Marston, *Report of a WHO Technical Consultation on Birth Spacing*, World Health Organization, (June 13-15, 2005).

<sup>43</sup> Am. Coll. of Obstetricians & Gynecologists, *Statement of the Am. Coll. of Obstetricians & Gynecologists to the U.S. Senate, Comm. on Health, Educ., Labor & Pensions, Pub. Health Subcomm. on Safe Motherhood* (April 25, 2002).

<sup>44</sup> U.S. Ctrs. for Disease Control & Prevention, *Healthy People 2020 Summary of Objectives: Family Planning*, <http://healthypeople.gov/2020/topics/objectives/2020/pdfs/FamilyPlanning.pdf>.

<sup>45</sup> *Id.*

<sup>46</sup> U.S. Dep't of Health & Human Servs., Office on Women's Health, *Lupus: Frequently Asked Questions* (June 13, 2001), <http://www.womenshealth.gov/publications/our-publications/fact-sheet/lupus.pdf>.

<sup>47</sup> U.S. Dep't of Health & Human Servs., Nat'l Diabetes Information Clearinghouse, *Diabetes Overview*, <http://diabetes.niddk.nih.gov/dn/pubs/overview/#scope>; Ann S. Barnes, *The Epidemic of Obesity and Diabetes*, 38 *Tex. Heart Inst. J.* 142 (2011).

are poor also have unintended pregnancy rates that are more than five times the rate for women in the highest income level.<sup>48</sup> Nearly one out of ten African American women and one in fourteen Latinas of reproductive age experience an unintended pregnancy each year.<sup>49</sup> Inaccessible and unaffordable contraceptive counseling and services contribute to these disparities.

Further, millions of women live with chronic conditions such as cardiovascular disease, diabetes, lupus, and epilepsy, which if not properly controlled, can lead to health risks or even death during pregnancy. Denying these women access to contraceptive information and services does not comport with medical standards that recommend pregnancy prevention for these medical conditions.

Heart disease, for example, is the number one cause of death for women in the United States.<sup>50</sup> The American College of Cardiology and the American Heart Association Task Force on Practice Guidelines issued specific recommendations for management of women with valvular heart disease.<sup>51</sup> They conclude that individualized preconception management should provide the patient with information about contraception as well as maternal and fetal risks of pregnancy.<sup>52</sup> Some cardiac conditions in which the physiological changes brought about in pregnancy are poorly tolerated include valvular heart lesions such as severe aortic stenosis, aortic regurgitation, mitral stenosis, and mitral regurgitation all with III-IV symptoms, aortic or mitral valve disease, mechanical prosthetic valve requiring anticoagulation and aortic regurgitation in Marfan syndrome.<sup>53</sup>

The American College of Obstetricians and Gynecologists and the American Diabetes Association have developed practice guidelines for the preconception care for women with pregestational diabetes. According to the American Diabetes Association, planned pregnancies greatly facilitate diabetes care. Their recommendations for women with diabetes with childbearing potential include: (1) use of effective contraception at all times unless the patient is in good metabolic control and actively trying to conceive; (2) counseling about the risk of fetal impairment associated with unplanned pregnancies and poor metabolic control; and (3) maintain blood glucose levels as close to normal as possible for at least two to three months prior to conception.<sup>54</sup> The American College of Obstetricians and Gynecologists further recommends that “[a]dequate maternal glucose control should be maintained near physiological levels before conception and throughout pregnancy to decrease the likelihood of spontaneous abortion, fetal

<sup>48</sup> Lawrence B. Finer & Stanley K. Henshaw, *supra* note 12.

<sup>49</sup> Susan A. Cohen, *Abortion and Women of Color: The Bigger Picture*, 11 *Guttmacher Policy Review* 3 (Summer 2008), <http://www.guttmacher.org/pubs/gpr/11/3/gpr110302.html>.

<sup>50</sup> Lori Mosca, et al., *Tracking Women's Awareness of Heart Disease: An American Heart Association National Study*, 109 *J. Am. Heart Ass'n* 573 (Feb. 4, 2004).

<sup>51</sup> Robert O. Bonow et al., *Guidelines for the Management of Patients with Valvular Heart Disease*, *Am. Coll. of Cardiology/Am. Heart Ass'n Task Force on Practice Guidelines* (Comm. on Mgmt. of Patients with Valvular Heart Disease), 98 *J. Am. Coll. of Cardiology* 1949-1984 (Nov. 1998).

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> Am. Diabetes Ass'n, *Standards of medical care in diabetes-2006*, 29 *Diabetes Care* S4 (2006).

malformation, fetal macrosomia [excessive birthweight], intrauterine fetal death, and neonatal morbidity.”<sup>55</sup>

Similarly, contraception plays a critical role in preparing a woman with lupus for pregnancy. Lupus is an auto-immune disorder of unknown etiology which can affect multiple parts of the body such as the skin, joints, blood, and kidneys with multiple end-organ involvement. Often labeled a “woman’s disease,” nine out of ten people with lupus are women.<sup>56</sup> Women with lupus who become pregnant face particularly increased risks. A large review of United States hospital data found the risk of maternal death for women with lupus is twenty times the risk of non-lupus pregnant women.<sup>57</sup> These women were three to seven times more likely to suffer from thrombosis, thrombocytopenia, infection, renal failure, hypertension, and preeclampsia.<sup>58</sup> Women who suffer from moderate or severe organ involvement due to lupus are at significantly higher risk for developing complications during pregnancy, and the guidelines discussed above regarding chronic disease apply to women with those co-morbidities.<sup>59</sup> This should be taken into consideration in the decision to become pregnant or to carry a pregnancy to term.<sup>60</sup>

Historically, women with lupus were discouraged by the medical community from bearing children. This is no longer always true, however, pregnancy for women with lupus is always considered high risk, and should be undertaken when, if at all possible, the disease is under control. The National Institute of Arthritis and Musculoskeletal and Skin Diseases (“NIAMS”) recommends that a woman should have no signs or symptoms of lupus before she becomes pregnant.<sup>61</sup> In addition, NIAMS directs women as follows: “Do not stop using your method of birth control until you have discussed the possibility of pregnancy with your doctor and he or she has determined that you are healthy enough to become pregnant.”<sup>62</sup>

#### F. DENYING WOMEN ACCESS TO CONTRACEPTIVE INFORMATION AND SERVICES UNDERMINES QUALITY OF CARE FOR WOMEN.

Ideological restrictions occur at various levels, including the institutional and health system level and the political level. Refusal clauses are statutory or regulatory “opt out” provisions that impede patient access to necessary and desired health care services and information. At the institutional level, the restrictions that have the greatest impact on access to care are those imposed by institutions controlled by religious entities. In particular, the Catholic health system has the broadest religion-based health care restrictions. The U.S. Conference of

<sup>55</sup> Am. Coll. of Obstetricians & Gynecologists, *ACOG Practice Bulletin No. 60: Pregestational diabetes mellitus*, 115 *Obstetrics & Gynecology* 675 (2005).

<sup>56</sup> U.S. Dep’t of Health & Human Svcs., Office on Women’s Health, *supra* note 46.

<sup>57</sup> Megan E. B. Clowse, et al., *A national study of the complications of lupus in pregnancy*, 199 *Am. J. Obstet. & Gynecol.* 127e. 1, e.3 (Aug. 2008).

<sup>58</sup> *Id.* at 127e.3-e.4.

<sup>59</sup> *Id.*

<sup>60</sup> Nat’l Inst. of Arthritis & Musculoskeletal & Skin Diseases, *Lupus: A Patient Care Guide for Nurses and Other Health Professionals* 27-62, Patient Information Sheet 4-5 (3d ed. Sept. 2006).

<sup>61</sup> *Id.* at 45-46, Patient Information Sheet No. 11.

<sup>62</sup> *Id.* at Patient Information Sheet No. 4.

Catholic Bishops has issued *The Ethical and Religious Directives for Catholic Health Care Services* for all Catholic medical institutions. The Directives specify a range of services that are prohibited, including contraception. At the political level, legislation enacting refusal clauses impose restrictions unrelated to health and safety on women's ability to access reproductive health care services. These restrictions are driven by political ideology, electoral politics, and other political considerations that have nothing to do with evidence-based medicine.

**G. S.B. 2043 WOULD DANGEROUSLY EXPAND RELIGIOUS REFUSALS, THEREBY UNDERMINING WOMEN'S HEALTH, WELL-BEING, AND AUTONOMY.**

Statutory refusal clauses that impede women's access to contraceptive counseling and services jeopardize women's health and well-being, and rob women of their autonomy. S.B. 2043 is an expansive refusal provision that fails to account for (or even consider) the significant burdens that broad refusals have on patients. These are burdens that fall disproportionately and most harshly on low-income women, severely impacting their health outcomes and their ability to give informed consent for medical care. There are already ample statutory protections in existing law for health care providers and religious employers who object to providing certain services based on their religious or moral beliefs. These laws seek to establish a delicate balance between protecting health care providers and meeting the needs of patients. Among other things, HHS's religious employer exemption already exempts houses of worship and other religious non-profits that primarily employ and serve people of their faith. Over 330,000 houses of worship will likely fall under HHS' exemption.

The requirement that most new health plans fully cover contraception without cost-sharing helps ensure that an individual woman can make her own decision about whether to use birth control. A woman who opposes contraception need not use it. The criticism of the preventive services rule distorts these facts. No one will be compelled to use birth control (of course contraceptive use is nearly universal in women who are sexually active with a male partner, irrespective of religious affiliation). No one will be forced to condone contraceptive use. The rule concerns contraceptive coverage only, not abortion. Twenty-eight states already require employers to provide contraceptive coverage; the ACA ensures that women across the country will have the same benefits.

S.B. 2043 is therefore not only an unnecessary measure, but it also dangerously threatens women's health and well-being—subjugating a woman's access to health care to the ideological desires of her employer or insurer. S.B. 2043 is an extreme proposal that expands what an employer or insurance company—religiously affiliated or not—can refuse to do. It provides that *any* person or entity could refuse to “offer, provide, or purchase coverage for a contraceptive or sterilization service, or related education or counseling, to which that individual or entity is opposed on the basis of religious belief.” S.B. 2043 is not limited to religious-affiliated employers—it could apply to any person or entity claiming a religious or moral objection. Any person, even the owner of a grocery store or car repair shop, could refuse to provide his employees coverage for contraception or sterilization services. Any insurer could refuse to cover

these services in its benefits package. Not only could an employer or insurer refuse to cover birth control, they could also refuse to deny women information about birth control.

Even more, under S.B. 2043, any person or entity could refuse to provide coverage for virtually *any* service otherwise required by the ACA, thereby undermining the whole point of health insurance, which is to pool and minimize risk. Under the proposed bill, corporations could, for example, refuse to cover blood transfusions. An insurance program that fails to cover services that meet standards of medical care is inadequate and unsafe. It also fails at its essential task.

S.B. 2043 is not just bad policy; it also contravenes section 1557 of the ACA and Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* Section 1557(b) of the ACA provides that, “Nothing in this title (or an amendment made by this title) shall be construed to invalidate or limit the rights, remedies, procedures, or legal standards available to individuals aggrieved under . . . Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e *et seq.*)” In 2000, the Equal Employment Opportunity Commission made clear that an employer’s failure to provide insurance coverage for prescription contraceptives, in an otherwise comprehensive prescription drug plan, constitutes unlawful discrimination under Title VII.<sup>63</sup> Longstanding and settled law recognizes the right of women to have contraception covered in the same way that other drugs are covered by health insurance.

In sum, S.B. 2043 is inconsistent with medical science, and the right of all people to access health care that meets modern standards of appropriate medical care. Most women are covered by health insurance offered by their employer.<sup>64</sup> While most American women of reproductive age have some form of private insurance, the extent to which they have contraceptive coverage can differ dramatically depending on their type of insurance.<sup>65</sup> The ACA recognizes the importance of preventive services to the health and well-being of individuals, their families and their communities. Preventive services are required to be covered without cost-sharing in order to ensure that all foreseeable barriers to access to preventive services are removed. Allowing employers or insurers to erect new barriers in the form of refusal clauses vastly undermines the promise of the ACA to improve the health of the nation. Every woman should be able to make her own decisions about whether or when to prevent pregnancy based on her own beliefs, not the beliefs of her employer or insurer.

## H. CONCLUSION

Refusal clauses and denials of care should be evaluated using the same measurements used to evaluate quality generally, with the goal of providing care that is evidence-based, patient-

<sup>63</sup> U.S. Equal Emp’t Opportunity Comm’n, Decision on Coverage of Contraception (Dec. 14, 2000), <http://www.eeoc.gov/policy/docs/decision-contraception.htm>.

<sup>64</sup> Usha Ranji & Alina Salganicoff, The Henry J. Kaiser Family Foundation, *Women’s Health Care Chartbook: Key Findings from the Kaiser Women’s Health Survey 10* (2011), <http://www.kff.org/womenshealth/upload/8164.pdf>.

<sup>65</sup> The Henry J. Kaiser Family Found., *Key Findings from the Kaiser Women’s Health Survey* (July 2005), <http://www.kff.org/womenshealth/upload/women-and-health-care-a-national-profile-key-findings-from-the-kaiser-women-s-health-survey.pdf>.

centered, and preventative. All women should have access to the health care services they need based on medical evidence, their personal health needs, and their own beliefs. Employers, insurers, and hospital corporations should not be allowed to impose their ideology on women.

For more information or questions, please contact Susan Berke Fogel, Director of Reproductive Health at [fogel@healthlaw.org](mailto:fogel@healthlaw.org) or (818) 621-7358.

Thank you.

Mr. TOWNS. Let me begin by—and, first of all, you know, I must say that I am concerned—and I know it has been expressed earlier—that we have before us five distinguished men but no women. And I must admit that, being an ordained minister myself, I must say that even in spite of all of that, I am a little nervous over the fact that we have five men and no women. It sure would have been nice to at least have that kind of dialog, because I really think that that is very, very important.

And with that on the record, let me just move forward by saying, it is my understanding—I guess, Bishop Lori, I will go to you—that Georgetown University, a very prestigious university here in our city, offers health insurance that covers contraception for its faculty but not for its students. Is that correct?

Bishop LORI. I am not familiar with the insurance plan of Georgetown University.

Mr. TOWNS. Well, let me ask you, if that is the case, do you believe Georgetown students should be offered the same health insurance benefit as the faculty? Do you believe that should happen?

Bishop LORI. Again, I don't think I would be qualified to answer specifics about what kind of coverage provided to students and faculty.

Mr. TOWNS. Well, let's deal with generalities then.

Bishop LORI. All right.

Chairman ISSA. Would the gentleman yield?

Mr. TOWNS. I would be delighted to yield to the chair.

Chairman ISSA. Just briefly, we will have representatives of Catholic University, Abbey College, Baptist University, and Oklahoma Christian. So I think these are great questions, but we will get it answered for you on the second panel.

Mr. TOWNS. Well, you know, I think what I am trying to do, before the Bishop departs, I am trying to understand exactly what problems the Bishops have with the administration's policy. That is what I am really trying to understand. It is not clear to me.

Bishop LORI. Yes, well, the problems are at the level of principle and at the level of practicality.

The principle is the government's reaching in and forcing us to do something. We might disagree inside of the Church, we might have our problems inside of the Church, but it is not for the government to weigh in and be the arbiter of those things.

And, second, many church entities, such as the Diocese of Bridgeport, which I can certainly speak about, they are self-insured. And so, as a result, I am not only the employer but also the insurer. And so, certainly at the level of practicality, the new rule does nothing to help.

And also there are many—there are religious insurers. There are individuals who have conscientious objections, and the rules do nothing for them.

So we have problems on all of those levels.

Mr. TOWNS. Right. Well, let me ask you this then. What if a Catholic entity decides that it wants to obtain insurance for its employees from outside that covers contraceptives? Does that violate Catholic doctrine?

Bishop LORI. So, if you—your question is, if a Catholic entity wishes or goes ahead and purchases coverage for contraception or an abortifacient?

Mr. CUMMINGS. Yes.

Bishop LORI. We would say it does, yes.

Mr. TOWNS. Anyone else, does it violate your doctrine? Very quickly because I am running out of time.

Rev. HARRISON. More specifically, only in the case of those drugs which specifically cause abortion.

Mr. C. BEN MITCHELL. And within the Southern Baptist Convention, we have a resolutions process in our denomination that, time after time after time, has passed resolutions against any abortifacient drugs.

Rabbi SOLOVEICHIK. My concern here, Congressman, is not what one particular Jewish organization might say about a particular prescription or procedure or whether their tenets are violated when they are forced to provide that. My concern is when Congress or the administration comes in and says, "Well, I see that there are some members of one faith who say this, some members of faith who say this, so we are going to unilaterally side with these people and force everyone, even over their objections, to violate their conscience."

In general, a religious community and a religious organization should be free to define what the tenets of their faith are, and they should be listened to when they are told that a particular demand or mandate by the Federal Government violates those liberties.

Rev. HARRISON. Mr. Chairman, I would like to say "amen" to the rabbi because I have never had the chance to do that before.

Chairman ISSA. The gentleman's time has expired.

Mr. TOWNS. Could I give Dr. Mitchell just one—

Chairman ISSA. Of course. The gentleman can answer if he would like.

Mr. CRAIG MITCHELL. Yes, the Southern Baptist Convention, there is no one statement that speaks for all of us, but I think if you were to poll all the professors at our Southern Baptist seminaries, what you would find is that we stand solidly against abortion and we believe that it is contrary to Christian faith and practice.

Mr. TOWNS. You know, the reason I asked this question, being an ordained minister myself, you know, I still feel that the woman's right to choose is something that we should just not ignore. And, of course, as I indicated early on, you know, it sure would be nice and make me feel a lot more comfortable if we had a couple of females on this panel.

I yield back, Mr. Chairman.

Chairman ISSA. I thank the gentleman for yielding back.

I might note that the Reverend Barry Lynn was not a female, and that was who you requested that would have been on this panel.

With that, we go to the gentleman from Michigan, Mr. Walberg, for 5 minutes.

Mr. WALBERG. Thank you, Mr. Chairman. And I would yield for such time as needed.

Chairman ISSA. Thank you.

I just want to be very brief. Gandhi said, "In matters of conscience, the law of the majority has no place." Rabbi, in this case, where you have no faith-specific objections to what is in HHS, isn't that essentially why you are here, that all of us, as minorities, must stand together to say, there but for us goes someone else the next time?

Rabbi SOLOVEICHIK. Well, the concern of the Founding Fathers was not only the democratic rights of the majority to engage in self-governance; their major concern in constructing the Constitution was the rights of minority, what they called other factions or groups, in this country.

And when I see the religious leaders of one pretty large religious community in this country say that this government mandate will force us—or is seeking to force us to violate a tenet of our faith, and to see then the administration say, "Well, that's too bad," then smaller denominations or faiths in this country begin to wonder, well, not only is this an outrageous violation of one particular faith's religious freedom, it is quite frightening to all of us who care about our own religious freedom.

Chairman ISSA. Thank you.

I thank the gentleman for yielding.

Mr. WALBERG. Thank you, Mr. Chairman.

And I thank the panel for being here today. Thank you for your voice that you have stated very clearly.

In the Declaration of Independence, it refers to "unalienable rights." How do you understand "unalienable rights?" What is the meaning to you?

Please.

Bishop LORI. Thank you.

"Unalienable" means that they are inherent in the human person, and they are inherent in the human person because they have been put there by the Creator, and that they are, as John F. Kennedy said in his inaugural, they are not given by the generosity of the State but by the hand of God.

Mr. WALBERG. I assume all the rest of you would agree to that?

Let me ask a followup question. Should your parishioners, speaking especially of those of you, Bishop Lori, as well as Reverend Harrison, should your parishioners who are body shop owners or lawyers, whatever, have First Amendment rights of conscience?

Bishop LORI. They most definitely should—

Mr. WALBERG. Regardless of being an institution or not.

Bishop LORI. Yes. Institutional rights rest on the foundation of individual rights. And it is clearly the teaching of the church in its declaration on religious liberty that we begin, really, with individual rights. And so it ought to be possible in this country, if one wishes, to have a business, let's say, run on Christian principles, where people agree to work in such a business and where insurers and employers and employees all come together and agree how that is all going to work.

Mr. WALBERG. Reverend Harrison.

Rev. HARRISON. I agree completely.

It is surreal, this whole conversation is utterly surreal. If the Supreme Court can uphold the rights of a tiny sect to use a hallucinogenic drug in its religious rights, how is it that our fundamental

rights of conscience over long-established moral principle, virtually unchanging in the history of Christianity, is somehow dismantled?

And I find it totally offensive that we are subject to accommodations and grandfather clauses. You can't accommodate and you can't grandfather-clause the First Amendment. It is our right.

Mr. WALBERG. Martin Luther would express appreciation for your intensity of position on that.

In recent weeks, I have had the dubious privilege of sitting in hearings where I have heard the Constitution being attacked, being denigrated. When I have heard people at that table speak about "constitutional niceties" not dealing with the real world of today, when I have heard a Justice of the Supreme Court refer to the fact that new-forming-constitution nations ought to look away from our Constitution and ought to look to some other constitutions, it is unbelievable. And then we come to this time, when, in fact, constitutional liberties are being stepped upon, trounced upon, not only for institutions but for individuals, as you very clearly stated, in the area of religion and conscience.

I am a minister. I was formerly a pastor. I am glad to see you gentlemen here. I would encourage you, with great respect, to speak with clarity, to call for your congregations to understand the power of freedom and liberty. And as Jonathan Witherspoon, who happened to be a Member of Congress and a signer of the Declaration of Independence and a signer of the Constitution, stated very clearly: "A republic once equally poised must either preserve its virtue or lose its liberty." And John Adams followed, saying that, "Liberty once lost is liberty lost forever."

And let me finish my one statement, and I would ask for—

Chairman ISSA. The gentleman can have an additional 15 seconds.

Mr. WALBERG. Thank you—

Chairman ISSA. Only.

Mr. WALBERG [continuing]. Mr. Chairman.

I don't normally quote from Joseph Stalin, but today he said something appropriate about liberty. He said, "America is like a healthy body, and its resistance is threefold: its patriotism, its morality, its spiritual life. If we can undermine these three areas, America will collapse from within."

I would encourage the Church, I would encourage Congress, I would encourage our administration to fight back strongly against what Stalin understood and against what his principles, if he would have carried them out, would have accomplished through these—

Chairman ISSA. The gentleman's time has expired.

Mr. WALBERG. Thank you.

Chairman ISSA. I presume the gentleman brought Stalin up only to put him down.

Mr. WALBERG. Absolutely. And I think I brought him up—

Chairman ISSA. I thank the gentleman.

We now recognize the gentleman from Illinois, Mr. Quigley, for 5 minutes.

Mr. QUIGLEY. Thank you, Mr. Chairman.

Yeah, I was waiting for the picture of Stalin to appear before us.

But one of the things I enjoy about this place is that we quote Reagan to counter your arguments and you sometimes quote Kennedy to counter ours. So I did find the—

Chairman ISSA. I have Martin Luther King ready, too.

Mr. QUIGLEY. I know, I am sure.

What we did was we found the actual speech that President Kennedy as a candidate gave before the Greater Houston Ministerial Association, September 12, 1960. He said, "Because I am Catholic and no Catholic has ever been elected President, the real issues in this campaign have been obscured, perhaps deliberately." Comes to mind what is happening today. "I believe in an America that is officially neither Catholic, Protestant, nor Jewish, where no public official either requests or accepts instructions on public policy from the Pope, the National Council of Churches, or any ecclesiastical source."

He also says, "I do not speak for my church on public matters, and the church does not speak for me. Whatever issue may come before me as President, on birth control, divorce, censorship, gambling, or any other subject, I will make my decision in accordance with these views and in accordance with what my conscience tells me to be the national interest and without regard to outside religious pressures or dictates. And no power or threat of punishment could cause me to decide otherwise." Just to give the full context of that.

And I would ask, without objection, if this transcript could be included in the record?

Chairman ISSA. Without objection, so ordered. I am pleased.

[The information referred to follows:]

## Transcript: JFK's Speech on His Religion

JFK's Address to Protestant Ministers

Add to Playlist



Boltmann/CORBIS

Democratic presidential candidate John F. Kennedy addresses the Greater Houston Ministerial Association, a group of Protestant ministers, on the issue of his religion, Sept. 12, 1960.

[Watch Kennedy Deliver His Faith Speech](#)

December 5, 2007

text size **A A A**

*On Sept. 12, 1960, presidential candidate John F. Kennedy gave a major speech to the Greater Houston Ministerial Association, a group of Protestant ministers, on the issue of his religion. At the time, many Protestants questioned whether Kennedy's Roman Catholic faith would allow him to make important national decisions as president independent of the church. Kennedy addressed those concerns before a skeptical audience of Protestant clergy. The following is a transcript of Kennedy's speech:*

**Kennedy:** Rev. Meza, Rev. Reck, I'm grateful for your generous invitation to speak my views.

While the so-called religious issue is necessarily and properly the chief topic here tonight, I want to emphasize from the outset that we have far more critical issues to face in the 1960 election: the spread of Communist influence, until it now festers 90 miles off the coast of Florida; the humiliating treatment of our president and

vice president by those who no longer respect our power; the hungry children I saw in West Virginia; the old people who cannot pay their doctor bills; the families forced to give up their farms; an America with too many slums, with too few schools, and too late to the moon and outer space.

These are the real issues which should decide this campaign. And they are not religious issues — for war and hunger and ignorance and despair know no religious barriers.

But because I am a Catholic, and no Catholic has ever been elected president, the real issues in this campaign have been obscured — perhaps deliberately, in some quarters less responsible than this. So it is apparently necessary for me to state once again not what kind of church I believe in — for that should be important only to me — but what kind of America I believe in.

I believe in an America where the separation of church and state is absolute, where no Catholic prelate would tell the president (should he be Catholic) how to act, and no Protestant minister would tell his parishioners for whom to vote; where no church or church school is granted any public funds or political preference; and where no man is denied public office merely because his religion differs from the president who might appoint him or the people who might elect him.

I believe in an America that is officially neither Catholic, Protestant nor Jewish; where no public official either requests or accepts instructions on public policy from the Pope, the National Council of Churches or any other ecclesiastical source; where no religious body seeks to impose its will directly or indirectly upon

the general populace or the public acts of its officials; and where religious liberty is so indivisible that an act against one church is treated as an act against all.

For while this year it may be a Catholic against whom the finger of suspicion is pointed, in other years it has been, and may someday be again, a Jew— or a Quaker or a Unitarian or a Baptist. It was Virginia's harassment of Baptist preachers, for example, that helped lead to Jefferson's statute of religious freedom. Today I may be the victim, but tomorrow it may be you — until the whole fabric of our harmonious society is ripped at a time of great national peril.

Finally, I believe in an America where religious intolerance will someday end; where all men and all churches are treated as equal; where every man has the same right to attend or not attend the church of his choice; where there is no Catholic vote, no anti-Catholic vote, no bloc voting of any kind; and where Catholics, Protestants and Jews, at both the lay and pastoral level, will refrain from those attitudes of disdain and division which have so often marred their works in the past, and promote instead the American ideal of brotherhood.

That is the kind of America in which I believe. And it represents the kind of presidency in which I believe — a great office that must neither be humbled by making it the instrument of any one religious group, nor tarnished by arbitrarily withholding its occupancy from the members of any one religious group. I believe in a president whose religious views are his own private affair, neither imposed by him upon the nation, or imposed by the nation upon him as a condition to holding that office.

I would not look with favor upon a president working to subvert the First Amendment's guarantees of religious liberty. Nor would our system of checks and balances permit him to do so. And neither do I look with favor upon those who would work to subvert Article VI of the Constitution by requiring a religious test — even by indirection — for it. If they disagree with that safeguard, they should be out openly working to repeal it.

I want a chief executive whose public acts are responsible to all groups and obligated to none; who can attend any ceremony, service or dinner his office may appropriately require of him; and whose fulfillment of his presidential oath is not limited or conditioned by any religious oath, ritual or obligation.

This is the kind of America I believe in, and this is the kind I fought for in the South Pacific, and the kind my brother died for in Europe. No one suggested then that we may have a "divided loyalty," that we did "not believe in liberty," or that we belonged to a disloyal group that threatened the "freedoms for which our forefathers died."

And in fact, this is the kind of America for which our forefathers died, when they fled here to escape religious test oaths that denied office to members of less favored churches; when they fought for the Constitution, the Bill of Rights and the Virginia Statute of Religious Freedom; and when they fought at the shrine I visited today, the Alamo. For side by side with Bowie and Crockett died McCafferty and Bailey and Carey. But no one knows whether they were Catholic or not, for there was no religious test at the Alamo.

I ask you tonight to follow in that tradition, to judge me on the basis of my record of 14 years in Congress, on my declared stands against an ambassador to the Vatican, against unconstitutional aid to parochial schools, and against any boycott of the public schools (which I have attended myself)— instead of judging me on the basis of these pamphlets and publications we all have seen that carefully select quotations out of context from the statements of Catholic church leaders, usually in other countries, frequently in other

centuries, and always omitting, of course, the statement of the American Bishops in 1948, which strongly endorsed church-state separation, and which more nearly reflects the views of almost every American Catholic.

I do not consider these other quotations binding upon my public acts. Why should you? But let me say, with respect to other countries, that I am wholly opposed to the state being used by any religious group, Catholic or Protestant, to compel, prohibit, or persecute the free exercise of any other religion. And I hope that you and I condemn with equal fervor those nations which deny their presidency to Protestants, and those which deny it to Catholics. And rather than cite the misdeeds of those who differ, I would cite the record of the Catholic Church in such nations as Ireland and France, and the independence of such statesmen as Adenauer and De Gaulle.

But let me stress again that these are my views. For contrary to common newspaper usage, I am not the Catholic candidate for president. I am the Democratic Party's candidate for president, who happens also to be a Catholic. I do not speak for my church on public matters, and the church does not speak for me.

Whatever issue may come before me as president — on birth control, divorce, censorship, gambling or any other subject — I will make my decision in accordance with these views, in accordance with what my conscience tells me to be the national interest, and without regard to outside religious pressures or dictates. And no power or threat of punishment could cause me to decide otherwise.

But if the time should ever come — and I do not concede any conflict to be even remotely possible — when my office would require me to either violate my conscience or violate the national interest, then I would resign the office; and I hope any conscientious public servant would do the same.

But I do not intend to apologize for these views to my critics of either Catholic or Protestant faith, nor do I intend to disavow either my views or my church in order to win this election.

If I should lose on the real issues, I shall return to my seat in the Senate, satisfied that I had tried my best and was fairly judged. But if this election is decided on the basis that 40 million Americans lost their chance of being president on the day they were baptized, then it is the whole nation that will be the loser — in the eyes of Catholics and non-Catholics around the world, in the eyes of history, and in the eyes of our own people.

But if, on the other hand, I should win the election, then I shall devote every effort of mind and spirit to fulfilling the oath of the presidency — practically identical. I might add, to the oath I have taken for 14 years in the Congress. For without reservation, I can "solemnly swear that I will faithfully execute the office of president of the United States, and will to the best of my ability preserve, protect, and defend the Constitution, so help me God.

*Transcript courtesy of the John F. Kennedy Presidential Library and Museum.*

Chairman ISSA. Would the gentleman yield, briefly?

Mr. QUIGLEY. Sure.

Chairman ISSA. Thank you. I couldn't agree with you more that we need to put it all into context of what government might consider at government expense.

I thank the gentleman for yielding.

Mr. QUIGLEY. Thank you, Mr. Chairman.

Bishop—and I ask these questions, as I recognize Members on the other side were concerned, with the greatest respect, but it helps us understand how far this can go. Because, for me, the question sometimes comes to, where does the conscience decision lie? Does it lie with a group of men, as the panel today or the Council of Bishops? I mean, who does it lie with? Does it lie with the individual woman to make those decisions?

And, also, do you support this same policy that you have as it relates to the private sector? In other words, do you think that a fast-food restaurant person can, because of his moral objection, say to his employees, "I am not going to provide birth control, as well," or a larger corporation?

Bishop LORI. You know, if there is real religious liberty in our country, then churches, even if there is disagreement within those churches, have the God-given right to run their own institutions and their own internal affairs according to their teachings. And if there should be discussion within that church or even dissent within that church, it is not for the government to reach in and to decide or to weigh in on one side or the other.

The fact of the matter is that a lot of people like to work for the Catholic Church—that is the one I can speak for—because they like to work for mission. They understand that when they sign up to work for a diocese or a Catholic school or for Catholic Charities what the teaching is. We have an organized magisterium with the Pope and the bishops, and that sometimes people agree with it, sometimes they don't, but they love the mission and they come and work. We have no trouble retaining and attracting people to work for us.

We provide great health-care plans. But, you know, under these rules, we might have the best health-care plan in the world, but if even one of these so-called preventive services were not in our plan, we would be fined \$2,000 per employee.

Mr. QUIGLEY. But—

Ms. BUERKLE. Would the gentleman yield?

Mr. QUIGLEY. I am sorry. I am just so short on time.

Bishop, getting to the question, do you believe that a private-sector company, if the owner or the board had moral objections, the same moral objections you do, which I respect, do you think that they have a right to deny offering contraceptive services?

Bishop LORI. I think that that freedom obtains right now. It already obtains. They can already do that.

Mr. QUIGLEY. But we are talking about legislation, Bishop—

Bishop LORI. Right.

Mr. QUIGLEY [continuing]. And there is legislation also proposed right now that would extend this to the private sector.

Bishop LORI. We are saying that this legislation should not do so. We have been able to have that freedom now, and the world has not fallen in upon itself.

Chairman ISSA. The gentleman's time has expired.

We now recognize the gentleman from Ohio—we have the gentlelady from New York, Ms. Buerkle, for 5 minutes.

Ms. BUERKLE. Thank you very much, Mr. Chairman.

And let me begin by saying what an honor it is to have you here before us this morning and to hear your profound defense of First Amendment rights in a time when there is so much discussion and debate about this. It is so uplifting for me to listen to so many different denominations talk about religious freedom, because I believe that is the reason, as was so clearly stated by many of you, why people came to this country and why they continue to come to this country, because we offer a freedom of exercising your religion. So thank you very much for being here this morning.

I am a nurse. I have spent most of my professional career both as a nurse and a health-care attorney. I am a mother. I have been blessed with 6 children and soon to be 13 grandchildren. So I feel like I can speak to this issue.

And I really find it so objectionable that my colleagues on the other side of the aisle would characterize this as an issue as narrow as contraceptives or abortion or sterilization. This is a fundamental assault on one's conscience. And folks who don't believe in God or folks who do believe in God or believe in a certain—it is an affront to each and every American's conscience.

So to try to narrow this down into a contraceptive or a women's health issue, I am so appalled that that is the approach. This is a fundamental assault on our First Amendment rights. And we have to challenge the media and, as my colleague mentioned, challenge the churches to articulate, this is the issue; this is a First Amendment assault, and we need to defend our Constitution.

So I thank all of you very much for being here.

I want to just briefly talk—I think we have established that you feel that this is a violation of conscience. I would like to just quickly go down the panel and ask each one of you, how do you perceive this new rule?

And I want to clarify, first of all, before I ask you my question, the HHS rule was not changed. Do you agree with that?

Okay. So let's establish that for the record, that, despite this accommodation, the rule hasn't been changed. And it was a verbal, as you mentioned—nothing was put in writing, which is always of concern.

But I want to now ask each one of you, how would you see this rule that has not been changed that violates conscience rights, how do you see that affecting the missions of each one of your churches?

Bishop, we can begin with you.

Bishop LORI. First of all, it does not remove the mandate, and, as a result, it is still a great intrusion into the freedom of our churches. And besides that, we think it violates the Religious Freedom Restoration Act because it substantially burdens our religious freedom by forcing us, indirectly but nonetheless forcing us, to provide the so-called preventive services in violation of our teaching.

And it also is simply unworkable, because many religious entities are self-insured, and as a result, we are not only the employer but the insurer. And so then it directly involves us in providing the prescribed services.

Ms. BUERKLE. Thank you, Bishop.

And for the remaining members of the panel, do you anticipate that there will be fines or penalties that you will have to face because of this?

Rev. HARRISON. Well, the penalties are variegated and applied over time, but we could face multimillion, tens of millions of dollars of fines, according to what our preliminary research has shown, should we fall out of the grandfather clause in some fashion.

Aside from that, this entire thing has already cost us a lot of money because we were not able to take the steps, cost-savings steps. We had to freeze everything already, when the health legislation was on the table and passed.

Ms. BUERKLE. And, Dr. Mitchell, do you anticipate that it will affect the mission of all of the institutions and the mission going forward?

Mr. C. BEN MITCHELL. Yes, ma'am, I do. Southern Baptist, my own denomination, is a free church. That is to say, we are not unlike our Catholic friends. We are not—we don't have a magisterium. Every church is an autonomous body—16.8 or 17 million members and 5,000 or so denominations.

I can tell you this. Because we are a free church and because we are so committed to a free state, because, as I tried to indicate in my comments, our genesis in America was committed to that freedom of conscience and liberty of religious expression, tens of thousands of us, maybe hundreds of thousands of us, would be very willing to spend nights in jail for the sake of the preservation of religious liberty.

Ms. BUERKLE. Thank you.

Mr. C. BEN MITCHELL. It is not just our coffers that are at risk, it is our very freedom.

Ms. BUERKLE. Thank you.

Rabbi, I am over time. If we could just ask for two quick answers, so we can get you in the record.

Rabbi SOLOVEICHIK. My concern, Congresswoman, is both for the objective religious-freedom rights of everyone in this country, but I am also quite worried about the long-term implications when I see an administration feeling free to say, first of all, what a religious denomination's tenets require and do not require. And I am also greatly concerned about the long-term implications when an administration declares that a particular organization is not a religious organization precisely because they are motivated—in a situation where that organization is motivated by its faith to reach out to people beyond their faith.

Ms. BUERKLE. Thank you.

Dr. Mitchell.

Mr. CRAIG MITCHELL. The thing that concerns me is that, if they don't see this as a religious-liberty issue, what do they see as a religious-liberty issue? And where do they stop? What I see here is a hollowing out of what the concept of religious liberty is, almost to the point where eventually it will be nonexistent.

Ms. BUERKLE. I thank you all very much.

And I yield back. Thank you.

Mr. LANKFORD [presiding]. Thank you.

The chair recognizes Mrs. Maloney for 5 minutes.

Mrs. MALONEY. Thank you.

And I thank all of you for your work and for being here today.

I have serious concerns that the issue we are focusing on today, whether women should have access to contraceptives in their insurance coverage, is only a very small part of a broader campaign to attack the use of contraceptives generally for women across this country.

For example, right now, in 14 States in this country, in this year, activists have been pushing initiatives to amend State constitutions to define an embryo as a person from the second of fertilization. Voters have already rejected fertilization personhood laws three times—twice in Colorado and once in Mississippi. The effect of these initiatives would be to criminalize certain birth control methods.

So my question to the panelists is a general question, is whether you agree that we should outlaw any form of contraception starting at the moment of fertilization.

And if I could get a brief answer from Bishop Lori and then Reverend Harrison and all down the line.

Bishop LORI. The pointed issue here is whether or not a church that teaches the sacredness of life from the beginning or opposes contraception or sterilization on moral grounds should be forced to pay for it, not whether or not it should be illegal.

Mrs. MALONEY. But do you consider birth control pills to fall in that category? In other words, would you favor making the use of birth control pills illegal in this country?

Reverend Harrison.

Rev. HARRISON. No, I would not. But neither do we include birth—do we include those abortion-producing medications as birth control.

Mrs. MALONEY. When you say “abortion-inducing medications,” what are you referring to?

Rev. HARRISON. I am referring to those medications that can cause a fertilized egg or an embryo to be aborted.

Mrs. MALONEY. Is that so-called Plan B?

Rev. HARRISON. Yes, Ella and Plan B.

Mrs. MALONEY. Well, what about IUDs, Dr. Mitchell? Do you believe that they should be illegal?

Mr. C. BEN MITCHELL. We believe that they are contrary to our view of the sanctity of human life because they allow fertilization but they prevent implantation, and we believe that human life begins at conception, not at implantation.

Mrs. MALONEY. Well, what I understand from the administration’s proposal and what I understand from the public comment in opposition to his proposal was that you do not want to pay for these services. And under its proposal, you would not pay for these services. They would be absolutely separate in an insurance plan.

Now it seems that you are saying that no women should have access to them and that they should be criminal. And what are your comments on that?

I mean, I support religious freedom. I support every type of religion in America. But I do not support imposing my religious beliefs or anybody else's on anybody else.

Bishop LORI. In fact, the cost of providing those services are borne someplace, either in the premiums that religious entities pay, or they are borne because our plans are self-insured and therefore we are the insurer as well as the employer, or because we have religious insurers. In other words, these so-called accommodations were made without reference to the real world that the Church operates in, and, as a result, they still entail us in cooperating with this and in paying for it.

Mrs. MALONEY. But I would say, with all respect, that in a pluralistic society where we all have different beliefs—I, for one, am opposed to the war in Afghanistan, but my tax dollars are supporting the war in Afghanistan.

Bishop LORI. Congressman—

Mrs. MALONEY. May I continue, please, sir?

I support—I am opposed to—many Americans are opposed to capital punishment, yet their dollars are supporting capital punishment. So, in many ways, when we live in America, and it is a total society, then we are all a part of it. And I believe that the President bent over backward, or rather the administration, to make this separate.

And I would just like to conclude by saying that, although I respect your right to have your own opinions about birth control, I really do believe and think that the majority of Americans do not share them. And they should be entitled to have their beliefs, too.

I yield back.

Mr. LANKFORD. Thank you.

With that, I yield to Mr. Jordan.

Mr. JORDAN. I thank the chairman.

I want to thank our witnesses for coming today.

Doesn't this just get, this ruling, get to the very heart, the very foundation of what America is about? You think about this country, this experiment in freedom we call America. People came here because in Europe they said, "You have to practice your faith a certain way," and they said, "No, we don't. We are going to go to America where we can do it the way we think the good Lord wants us to do it." And that very fact is fundamental to what we call this great Nation of America.

So this gets right at the heart of what we are as a country, what we are as a people, what the Founders envisioned this Nation would offer its citizens. Isn't that what—forget all of this other talk we have been hearing from the other side. This is fundamentally what is at stake here, the heart and soul of what America is about.

Bishop LORI. Certainly, that is the glory of our country. Religious freedom is the first of the freedoms in the Bill of Rights, and it is really the source—

Mr. JORDAN. But I would say even before the First Amendment, the citizens of this country understood this is what America was going to be about. Yes or no, Bishop?

Bishop LORI. Oh, yes, absolutely.

Mr. JORDAN. Reverend.

Rev. HARRISON. In my position over the last 10 years, I have had to travel all over the world, 40 or 50 countries or more. And every time I return home, I want to kneel down and kiss the ground—

Mr. JORDAN. Thank the good Lord you live here, yep.

Rev. HARRISON. —because of the blessings that we enjoy in this country. And I will stand, personally, for and fight for the rights of every single citizen in this country to believe and act—

Mr. JORDAN. And this administration is putting that very principle in jeopardy.

Rev. HARRISON. I will fight for, give my sons up to fight for—I have two sons, no daughters—and sacrifice everything I have for the sake of guaranteeing the rights of every single—

Mr. JORDAN. Well said.

Rev. HARRISON [continuing]. Citizen in this country.

Mr. JORDAN. Thank you.

Dr. Mitchell, yes or no?

Mr. C. BEN MITCHELL. I think this issue does focus very, very clearly the issue of religious liberty—

Mr. JORDAN. Yep.

Rabbi.

Mr. C. BEN MITCHELL [continuing]. Whatever the other issues may be.

Mr. JORDAN. Thank you.

Rabbi.

Rabbi SOLOVEICHIK. That is right, Congressman. This is an issue of religious liberty, and only an issue of religious liberty, that brings us here today.

Mr. JORDAN. Yep.

Dr. Mitchell.

Mr. CRAIG MITCHELL. This is what America is about. And if we let this go, we are in trouble.

Mr. JORDAN. Okay. I want to play a tape for you. Let me just change gears a little bit. I am going to play a tape of what the President said, and I want to see if you think he has kept his promise and honored what he said he was going to do with the overall ObamaCare legislation.

Play the tape, if you would, please.

[Audio played.]

Mr. JORDAN. Bishop, do you think, in light of what HHS has ruled, do you think the President has kept his word?

Bishop LORI. I think right from the beginning we bishops have been very concerned that conscience protection be built into any form of health-care reform that would emerge—

Mr. JORDAN. And because it isn't, there is no way that statement that the President made can actually be true.

Bishop LORI. We feel that—

Mr. JORDAN. As it applies to you.

Bishop LORI. We feel that we have good relationships and we have exercised our freedoms wisely, and therefore it has not been broken and shouldn't be fixed in the way it is so-called fixed.

Mr. JORDAN. Reverend, did the President—

Rev. HARRISON. As a church body, we have no official position on the rightness or wrongness of the President's—

Mr. JORDAN. The President said if you like—

Rev. HARRISON [continuing]. Health plan.

Mr. JORDAN. The President said if you like your plan, you can keep it. Is that true?

Rev. HARRISON. All I would like to say is that we are here, I am here today because we are deeply concerned about the religious-liberties provision.

Mr. JORDAN. Will you be able to keep the same plan if this rule is in place?

Rev. HARRISON. We are hanging on by a fingernail. And, as I said in my opening statement, I believe a couple of strikes of a keyboard could eliminate our freedoms very easily.

Mr. JORDAN. Doctor, did the President honor his promise?

Mr. C. BEN MITCHELL. I think it is very ironic that he used the word several times “trust” and predicated his comments on the word “trust.” I am not from Missouri. I have lived there before, but I am not from Missouri. I have to say that any future rulings from the HHS I will have to see to believe.

Mr. JORDAN. Yeah. Will you be able to keep the plan that you offer?

Mr. C. BEN MITCHELL. Well, we have—yes.

Mr. JORDAN. Rabbi.

Rabbi SOLOVEICHIK. I am not here to represent an institution that offers a plan or does not offer a plan.

Mr. JORDAN. Right. Got it. You are here—

Rabbi SOLOVEICHIK. What brings me here is great concern when an administration or HHS claims the power in a mandate to define what is a violation of religious belief and what is not a violation of religious belief.

Mr. JORDAN. Finally, if I could, Dr. Mitchell, do you think the President kept his word with the clip you saw?

Mr. CRAIG MITCHELL. I don't think that he did. I think that rather than fix what is broken, he has broken what was already working.

Mr. JORDAN. Okay.

I yield back. Thanks.

Chairman ISSA [presiding]. I thank the gentleman.

We now go back to the gentleman from Illinois, Mr. Davis, for 5 minutes.

Mr. DAVIS. Thank you very much, Mr. Chairman.

And I want to thank all of our witnesses for being here.

As I listened, this is a very serious discussion, and I think all of America is really watching and listening to what it is that we have to say.

I, first of all, want to associate myself with the comments made by the former chairman of the full committee, Mr. Towns, and my colleague from Illinois, Mr. Quigley, relative to the absence of women on this particular panel.

With that said, it seems to me that we have not talked a great deal about the health-care benefits of the discussion, of the issue. And given the fact that the discussion emanated from implementation of provisions of the Affordable Care Act, let me ask if either one of you gentlemen have a health background, in terms of any kind of health delivery to individuals?

No? All right.

Let me just—obviously, there are many well-known benefits for women to be able to control their own lives and to plan their pregnancies, including by using contraception to determine whether or when they get pregnant.

But that is merely the contraceptive use. A significant proportion of women, 1.5 million, use the pill exclusively for medical purposes other than contraception. They use contraceptives to treat severe menstrual pain, migraines, uterine fibroids, and endometriosis. Oral contraceptives also help prevent ovarian cancer. One study found that oral contraceptives have prevented 200,000 ovarian cancers and 100,000 deaths from the disease.

Is it your understanding that—or do your religious teachings prohibit the use of contraception for health-related purposes such as treating ovarian cancer?

Bishop, perhaps we could start with you.

Bishop LORI. I think Catholic moral theology is very nuanced. It recognizes that the same drug can operate in different ways and accomplish different things. If it is used to prevent birth, it is against our teaching. And so we have operated with a considerable—with a lot more nuance than we are usually given credit for.

I would also observe, by the way, that 90 percent of all private health-care plans give access to contraception. We are talking about a very narrow band and for very specific purposes here.

Mr. DAVIS. Anyone else?

Rev. HARRISON. We are all for medicine for women. In fact, I have spent years of my life working with relief and development and charitable organizations providing specifically services to women. So we are all for medications that help women. We are just not for using certain medications to end pregnancies.

Mr. DAVIS. I think the—

Mr. C. BEN MITCHELL. I was just going to add, in our setting, because we are a free church, the use of contraception, the contraceptive pill for instance, is a matter of Christian liberty. So that is, the use of the pill is a matter of Christian liberty.

Mr. DAVIS. I think there are perhaps some people who get a bit confused when they try and sort out what the most rational, logical approach might be, especially if we are trying to improve health care and if we are trying to provide the best health-care delivery system. And so we see numerous health experts who recommend the use of family planning as part of preventive care for women: the American College of Gynecologists, the American Academy of Family Physicians, the American Academy of Pediatrics—

Chairman ISSA. I would ask that the gentleman have an additional 15 seconds.

Mr. DAVIS [continuing]. And the American Public Health Association.

So my 15-second question is, if a woman who worked for one of the institutions that you might be associated with had need for these services as a health measure, what would your position be? Should she receive them? Should she get them?

Chairman ISSA. You can answer briefly. Anyone who wants to answer can answer briefly. Time has expired.

Rabbi SOLOVEICHIK. Congressman, if you as a legislator or the administration or Health and Human Services sought to provide

greater preventive care, seeking in an initiative to prevent illnesses among women or men, and that was the focus, none of us would be here today. We are not here because we wish to in any way hurt preventive care of anybody. And you absolutely could have done that, and the administration could have done that.

We are here today because the administration is showing insensitivity to the liberties of conscience of some faith communities in America, not necessarily in this case, my faith community, but that is the insensitivity being shown here. And that is why we are all here today.

Mr. DAVIS. Thank you very much.

And thank you, Mr. Chairman.

Chairman ISSA. Thank you.

And, with that, we go to the gentleman from Pennsylvania, Mr. Kelly, for 5 minutes.

Mr. KELLY. I thank the chairman.

And I would like to just yield 15 seconds or so to Ms. Buerkle.

Ms. BUERKLE. I thank the gentleman from Pennsylvania.

Just briefly, because it was just raised, the issue of access to health care, on Monday of this past week I toured a very prominent, wonderful Catholic hospital in my district and talked with administrators. And they are a self-insured program. And she said to me, "If this rule continues to be enforced, we will have to drop our self-insurance. All of our employees will have to go into contract with an insurance company, and it will dramatically raise their costs." So I think that is one of the unintended consequences of this rule.

I yield back, and I thank you.

Mr. KELLY. I thank the lady.

And, all of you, thanks for being here today, because this is a difficult situation for a lot of people across the country. And I think it was Dr. Mitchell that talked about trust and truth. And I have a habit every time I get into these meetings anymore of going to get some definitions of what "truth" and "trust" are. "Truth" is nothing more than sincerity in action, character, and utterance. "Trust" has to do with assured reliance on the character, ability, strength, or truth of someone or something.

And this hearing today is about freedom of speech, freedom of religion, and a government that continues to intrude on our private lives in ways that we may not agree with and certainly don't agree with in many, many ways, shapes, and forms.

In the area of the country where I am from, there is an old saying that goes something like this: Fool me once, shame on you; fool me twice—no—shame on me. And I think we have reached that point in the most transparent administration that we have ever seen.

There is one thing that is very clear to me: Transparency has nothing to do with any of this. We take bad policies and when we can't shove it down the public's throat, we take the package back, re-wrap it in a little different color paper, put a little different bow on it, and say, "Do you like me better now?"

So I have a very difficult time sitting here in these hearings and getting beyond what it is we are talking about. We are talking about the Constitution, and we are talking about a President

whose former job at the University of Chicago, he was a professor of constitutional law. So I find it difficult to understand how the Constitution only has relevance on certain days and at certain times and only if it really appeals to something I am trying to push that day.

So we have come to “constitutional niceties” and “constitutional convenience,” and what we have done, we have turned our back on freedom of religion, freedom of speech, and, again, a government that is too overbearing.

So, in light of all that—and, Your Excellence, if we could start with you, any of you. Because of the transparency—let me ask you, did anybody in the White House or Secretary Sebelius or anybody from the Department of Health and Human Services ever seek your input in any of this language? Your Excellency?

Bishop LORI. Not on this latest rounds of rules, no.

Mr. KELLY. Okay. Previously?

Bishop LORI. We certainly had the opportunity to comment. When the interim final rule by HHS came out in August 2011, we had the opportunity to comment. Massive numbers of comments were sent in. As is well known, the President met with Cardinal-designate Dolan, and so there was certainly a meeting at that level. But then before the final rule came out last Friday, there was no prior consultation.

Chairman ISSA. Would the gentleman yield?

Mr. KELLY. Yes, I will.

Chairman ISSA. But on the earlier promotion of what now is known often as ObamaCare, you were well consulted. There was an outreach to get support for that, wasn't there?

Bishop LORI. When the underlying bill itself was being debated, we certainly had the opportunity to weigh in, and we did.

Chairman ISSA. I thank the gentleman.

Mr. KELLY. Okay.

Any other Members of the panel?

I mean, I really am concerned, because we talk all the time about this transparency and collecting from around the country from the best minds available. And then it seems to me, we sit back and say, “Well, you know, we talked to them. You know what? They don't agree with us, so we are going to kind of dismiss that and we will go forward.” And that is the thing that I think is more disturbing than anything else. I, for one, as just a regular American citizen, am trying to figure out—and I think I know the answer. And I said earlier, fool me once, shame on you; fool me twice, shame on me. I am not going to be fooled anymore.

Reverend or Rabbi, anybody that wants to weigh in on this, because if any of you had any input or are aware of any input that was taken seriously and not just given some kind of a massage?

Mr. C. BEN MITCHELL. I am not aware of any input other than what the average citizen would have.

But I also have to say that those closing comments in my statement, that the administration's accommodation was no accommodation at all, were written several days ago before I learned that on Friday the final rule had no accommodation. That seems to me not to reflect good-faith efforts and trust.

Mr. KELLY. Rabbi.

Rabbi SOLOVEICHIK. I would just refer, Congressman, to a series of questionings that took place on the other side of the Hill. When Senator Hatch asked Secretary Sebelius about not only whether they had originally, in designing these guidelines, looked into the concerns of religious communities but also to the constitutional and legal issues of religious freedom, and the answer was quite remarkable.

Mr. KELLY. Dr. Mitchell.

Mr. CRAIG MITCHELL. I am not aware of anybody asking about this, but, you know, when you consider that the President taught constitutional law at the University of Chicago, you would kind of think that this would have been the first thing he would have considered.

Mr. KELLY. Yeah. Well, like you, I am tired of being gamed.

I want to thank you all for being here. I want to thank you for speaking.

And also, my bishop, Bishop Zubik in Pittsburgh, and Bishop Trautman in Erie have been very clear about how they feel about this to everybody that they can talk to.

I appreciate you coming forward. I appreciate your bravery. And we continue to battle for the same things, and that is the defense of our First Amendment. Thank you so much.

And I yield back, Mr. Chairman.

Chairman ISSA. I thank the gentleman. The gentleman's time has expired.

We now go to the gentleman from Missouri for 5 minutes, Mr. Clay.

Mr. CLAY. Thank you, Mr. Chairman.

And this is obviously an issue that provokes strong reactions on all sides. And that, unfortunately, can lead to overstatement, exaggeration, or even to say disingenuousness. It is sad to see the discourse reach such a low point, especially considering the respected and esteemed institutions that are participating in this discussion.

And I want us to be able to work together on this and other similarly critical issues that we face. I want us to try to agree on goals and then try to work together to achieve those goals. And I think that is what our constituents hired us to do. In fact, I know that is what my constituents from St. Louis hired me to do. But the rhetoric and verbal bomb-throwing on all sides keeps us from even talking about those goals, much less how to achieve them.

And so I am disappointed. I am disappointed in some who suggest that the Catholic Bishops' stance represents something sinister, that it is an attempt to deny all women of any faith access to any contraception or reproductive health care of any kind no matter where they work. And I don't think that is the case, and I certainly hope that is not the case. And it is unhelpful to advance that argument if we want to work together.

I am disappointed in those who claim that the administration has an agenda: to increase abortions, sterilizations, and contraceptive use by Catholics. And the facts don't back that up, not in the slightest. And it is not only unhelpful, it undermines what I believe to be a legitimate argument the Church can make about religious freedom.

But most of all, I am disappointed in this committee. Once again, rather than have a reasoned, equitable, and transparent examination of an important issue, we have a politicized and unbalanced hearing. Once again, we see an unfair attempt to score political points against the President and this administration.

And, you know, I did not support the initial narrow exemption that was announced on January 20th. As a Catholic, I did not believe it took into account the full extent of Catholic health care and social services nor of Catholic social teachings. And I am very pleased that the President expanded the exemption. The new policy provides the widest possible health-care coverage for all Americans, and it allows Catholic institutions to continue their faithful work in the service to education, health care, and charity.

And, Mr. Chairman, I urge all sides to continue to work toward reaching the goal that I know most Americans share, and at least some in this room do as well, and that goal is to provide the broadest possible access to health care to all Americans while respecting the genuine freedoms that our Nation guarantees to everyone. And I strongly urge all sides to exercise decency and respect for one another, even when we disagree most fervently. We should not sacrifice one set of principles in our struggle to uphold another.

And, at that point, Mr. Chairman, I have no questions, but I would like to yield the balance of my time to the gentleman from Maryland.

Mr. CUMMINGS. I thank the gentleman for yielding.

Bishop Lori, I am so—I am sitting here, and I am trying to—first of all, I am going to associate myself with the words of the gentleman, Mr. Clay.

But help me with this. If there is a woman—and, see, I am trying to—you mentioned practicality a little earlier. If there is a woman who is, say, working for a Catholic entity and she comes to you and she says, you know, “I want contraception; it is something that I want”—and I have read surveys where it said 98 percent of women, Catholic women, use contraception—I am just curious, what do you say to her?

Bishop LORI. When somebody comes aboard to work for the Church to begin with, the teaching is clear, the mission is clear, the teaching of the Church in all of its nuance is set forth, and the terms of the plan are clear.

Let's be clear that contraception is available in many different ways. Sometimes a couple in that condition, in that situation, might access it through a spouse's plan. But 90 percent of all health insurance plans include it. Plus, there is Title X; plus, there are clinics. It can hardly be said that this is unavailable. It is available very, very widely.

The issue here is forcing the Church to provide it directly or indirectly in contravention of the Church's teaching. And that is what we don't want to do. It is one thing that tax dollars pay for it; it is another thing when Church dollars pay for it.

Mr. CUMMINGS. Thank you very much.

Chairman ISSA. We now go to the gentleman from South Carolina, Mr. Gowdy, for 5 minutes.

Mr. GOWDY. Thank you, Mr. Chairman.

I want to do something that we don't have a chance to do very often in Congress, which is actually to apply the facts to the law.

Secretary Sebelius said her mandate, "strikes the appropriate balance between respecting religious freedom and increasing access to important preventative services." Now, I can find the free exercise of religion in the Constitution. You don't have to read very far to find that. I can't find the constitutional right to free preventative services. So what she is seeking to do is to balance something that cannot be taken away from you with something that the Constitution doesn't even provide to you.

But I want to do this, I want to go through the law. It is a very simple analysis.

Number one, does this mandate impose a substantial burden on the free exercise of religion? Yes or no? Does this mandate impose a substantial burden on the free exercise of your religious beliefs?

Bishop LORI. Yes, we believe it does.

Mr. GOWDY. Reverend Harrison.

Rev. HARRISON. That is why I am here.

Mr. GOWDY. Dr. Mitchell.

Mr. C. BEN MITCHELL. Yes, sir.

Mr. GOWDY. Rabbi.

Rabbi SOLOVEICHIK. It imposes a substantial burden on the religious freedom and religious beliefs of many Americans.

Mr. GOWDY. Okay. All right. Check.

Second part of the analysis: Is there a less intrusive means of accomplishing a compelling State interest? Let's take them backward. What is the compelling State interest in providing free contraception? It is available to 98 percent of the people in this country. Heck, there are some cities and States that will provide it for free; just show up.

So the notion that there is a compelling State interest in providing what is already available—and then go to the second part, is there a less intrusive means of providing that? I have not heard a single one of my colleagues say that they are going to submit a bill which pays for this themselves. I have not heard a single one of my colleagues offer to pay for it themselves. They want you to do it.

Yes, sir?

Bishop LORI. We would say that it is not a compelling governmental interest. If it were, there would be no such thing as grandfathered plans. If it were, that these plans that have existed until now with exemptions would not have been allowed to do so. And so we do not think there is a compelling government interest, because there are still, under the current law, far too many exceptions for the government to be able to make that argument.

Mr. GOWDY. You are right, Bishop. So even if this administration were to rewrite the Constitution, as has been known to happen from time to time, to find within the penumbra of the Fourth Amendment this right to free—not a right to preventative services; our friends on the other side of the aisle misapprehend the point—a right to free preventative services, it still doesn't pass the less intrusive aspect of this constitutional analysis.

So, with the law out of the way, then we can get to the sheer politics of this. I couldn't help but smile when my friend from Mis-

souri encouraged us all to not score political points. I couldn't help but think, "Gosh, this is an election year. I wonder if I ought to provide free preventative services to over half the voting population." Huh, I wonder if that is what he meant by scoring political points. If you want to do it, that is fine. Don't do it through the First Amendment of the Constitution.

I would say this in conclusion, then I want to give time to my friend and colleague, Mr. Mick Mulvaney.

Bishop, would you rather close down your hospitals and your schools than to comply with a governmental edict that violates your faith?

Bishop LORI. We are not going to violate our consciences.

Mr. GOWDY. Reverend Harrison, you have already spoken with respect to civil disobedience. I believe you said you would sooner go to jail than violate your conscience.

Rev. HARRISON. Yes, I would, clearly.

Mr. GOWDY. Dr. Mitchell.

Mr. C. BEN MITCHELL. I would like to be in his cell.

Mr. GOWDY. We will try to work that out.

Rabbi.

Rabbi SOLOVEICHIK. Freedom of conscience and of religion, Congressman, is the first and most sacred of American liberties.

Mr. GOWDY. Dr. Mitchell.

Mr. CRAIG MITCHELL. This is not the kind of thing that we can afford to play with. This is essential to our country.

Mr. GOWDY. Well, just so everybody understands what is going to happen, these guys are either going to go to jail because they won't violate their religious beliefs or the hospitals and the schools are going to close, which means government is going to get bigger because they are going to have to fill the void that is left when you guys quit doing it. And maybe that is what they wanted all along.

I apologize, my time is up.

Chairman ISSA. I am afraid you just lost a friend, Mr. Gowdy. Your time has expired.

Mr. GOWDY. Apologies to my friend from South Carolina.

Chairman ISSA. As is appropriate, I now ask unanimous consent that the statement and this paper by Martin Luther King be placed in the record in which he says, "There comes a time when one must take a position that is neither safe nor politic nor popular because conscience tells one it is the right thing."

With that, we go to the gentleman from Virginia, Mr. Connolly, for 5 minutes.

Mr. CONNOLLY. Thank you.

You know, I criticized the policy coming out of the Department of Health and Human Services because I thought that some of the critics, including critics of my own denomination, had a point. And I thought they had misstepped, and I urged the White House to correct the problem. I believe, like millions of Americans, that they did correct the problem.

And I believe today's hearing is a sham. And I believe—I have to assume each of you gentleman came here in good faith, but surely it has not escaped your attention that you are being used for a political agenda. Maybe you are willingly being used, I don't know. I don't know what is in your heart.

Here you are, being asked to testify about your rights being trampled on—an overstatement if there ever was one—while you are on a panel and your participation on the panel makes you complicit in, of course, the trampling of freedom, because we were denied, on this side of the aisle, any witness who might have a differing point of view.

Chairman ISSA. Will the gentleman yield?

Mr. CONNOLLY. No, sir, I will not.

And I think that is shameful. I think it actually contradicts exactly what you think you are here to testify about. And I think it taints the value of this panel that could have been a thoughtful discussion but it is not.

This is a panel designed, with your conscious participation or not, to try one more time to embarrass the President of the United States and his administration by overstating an issue which is sacred to all Americans, religious freedom. But, of course, in order to do it, we have to, in an almost Stalinist-like fashion, have signs of Democratic icons to rub Democratic faces in it, as if those icons would be on the same side of this dispute today. But since they are all deceased, it would be hard to gainsay that.

And so I say to you, as a member of this committee who actually shared the concerns you say you have last week, that I think this is a shameful exercise, and I am very sad you have chosen to participate and be used the way you are being used, just as you were in the previous questioning, as if people are going to jail over this. Shame. Everybody knows that is not true. Catholic Hospitals supported the compromise. They are not afraid of closing down hospitals in America.

If we want to have a legitimate debate about, you know, where is the right boundary, let's have it. But overstating it and making charges that are just outlandish and, frankly, beyond the pale serves no purpose other than political demagoguery in an election year. And men and women of the cloth, it seems to me, ought to run, not walk, away from that line.

I now yield to my colleague from Connecticut, Ms. Rosa DeLauro.

Ms. DELAURO. I thank my colleague for yielding to me.

I think that one of the pieces of information that hasn't been discussed here today at all, quite frankly, is that, in fact, there is an exemption for the Catholic Church, other houses of worship, for the Catholic Church and the synagogues, for mosques, there is an exemption—

Chairman ISSA. If the gentelady will suspend, the gentleman cannot leave the room while yielding to another Member. Would you please remain?

Mr. CONNOLLY. One second.

Chairman ISSA. The gentleman has yielded back his time.

We now go to the gentleman from Texas, Mr. Farenthold.

Mr. CUMMINGS. Mr. Chairman? Mr. Chairman, the gentleman is standing right there.

Mr. CONNOLLY. I am right here.

Chairman ISSA. Oh, the gentleman has returned. Is the gentleman going to remain, please?

Mr. CUMMINGS. He was standing right there.

Ms. DELAURO. Right here, Mr. Chairman.

Mr. CUMMINGS. Let the lady—

Chairman ISSA. The gentlelady—

Mr. CUMMINGS. Let the lady talk.

Chairman ISSA. The gentlelady may continue.

Ms. DELAURO. Thank you. I appreciate that, Mr. Chairman. And I also appreciate the opportunity to be here today. And I know I am not a member of this committee, so I appreciate that. But I also appreciate the opportunity to be able to speak in this forum.

The fact of the matter is that the churches, synagogues, mosques, other houses of worship are exempt, as are their employees. Let us state the facts on that. And most recently we had a Supreme Court decision that upheld the opportunity for those houses of worship to be able to hire whomever they want, so that the church is exempt, their employees are exempt.

Understand that what we are talking about here today—and I will speak about the Catholic Church as a provider and as an employer. And the fact of the matter is, as a provider, nothing changes. The conscience clause, all of that is intact. You cannot dispense, prescribe, use a contraceptive service if that is so your choosing.

But, in fact, the church is an employer. And as an employer, and now particularly under the accommodation that was made that there has to be provided for people who work for that entity to be able to get insurance coverage that includes the recommendations of the Institute of Medicine, which is a medical independent research body that was asked to come up with what are the essential preventive services that women would need for health care. And amidst them, amidst them, there is contraceptive coverage.

Chairman ISSA. The gentleman's time has expired.

Ms. DELAURO. Not churches or hospitals—

Chairman ISSA. We now go to the gentleman from Texas, Mr. Farenthold.

Ms. DELAURO. Talk about abridging freedom of speech.

Mr. FARENTHOLD. Thank you, Mr. Chairman.

And I understand that this is an issue that everyone is incredibly passionate about. It is the First Amendment to the Constitution, the one that I think our Founding Fathers considered most important because they put it first. And I can understand why everybody is passionate and concerned about this issue.

Quite frankly, I believe the Affordable Care and Patient Protection Act is unconstitutional to begin with. The attorney general of my home State, Texas, along with numerous others, have filed suit in the Supreme Court, and I am optimistic that the Supreme Court will hold the entire act to be unconstitutional.

But add to this the mandate that the Church provide and pay for services that they are opposed to brings it in contradiction to the First Amendment, as well. And that is a double strike. It makes it, I guess, even more unconstitutional, or doubly unconstitutional.

But I did have a question for Mr. Lori. I wanted to follow up with something some Members of the other side asked. I am the product of Catholic middle school, Catholic high school, and Catholic law school, so I guess I have had 4, 5, 6, 9 years of Catholic education. And unless the nuns got it wrong, the Catholic Church does not

have a problem with the use of contraceptives for medical purposes. So I would assume from that it wouldn't be morally objectionable to the church to pay for those for medical purposes.

I am not trying to put you on the spot. I am just trying to make sure I understand where the Church stands.

Bishop LORI. That would be my understanding also.

Mr. FARENTHOLD. And there are numerous organizations, both federally and private funding, that make available free or low-cost contraceptives throughout the country. I am sure you are aware of that?

Bishop LORI. Yes, that is also my understanding.

Mr. FARENTHOLD. So we have a mandate here that really is a lot of much ado about nothing. If it were carefully crafted, the chances of somebody not being able to get the care or, for that matter, the optional contraceptives that they desire is, for all practical purposes, nil?

Bishop LORI. Those services are very, very widely available, and what we are talking about is a very narrow band. It is clearly a minority opinion or a minority view, but we think it is one that ought to be protected.

Mr. FARENTHOLD. I think we are at a point where we are trampling on the Constitution for no real reason.

I also had the opportunity this week to meet I guess with your friend Bishop Mulvey from Corpus Christi. He sends his regards. And, you know, what we kind of talked about is how this really is a moral issue. Religious freedom—being told what to do is an intrusion on these freedoms. And the issue is religious liberty.

And maybe this is more of a rhetorical question than it is an actual question, but I will open it up to the panel. Today it is contraceptives; where do we go next? I mean, what are we opening the door to when we start trampling on these liberties?

And, again, I will call it a rhetorical question, but if any member of the panel would like to comment, I would welcome it.

Mr. CRAIG MITCHELL. Well, this was a question I asked before. Where does it end?

I think that we are clearly hollowing out the idea of religious liberty by going in this direction. And you can—it is one of just many—a death of many cuts. And if you can keep on finding reasons to reduce it, people will. And so I think that there is a real danger here.

Mr. FARENTHOLD. I think you will find—did you have something to add, Your Excellency?

Bishop LORI. It is at the level of principle. If the Church can be dragooned into providing these objectionable services, then the door is open to other objectionable services down the road. So it is breaching a principle.

Mr. FARENTHOLD. And I go back to, a lot is accomplished in this government one step at a time or incrementally. And we need look no further than the fact that you can practically smoke nowhere. First, you had to be in a section of the restaurant. Then you couldn't be in any section of the restaurant. Then you couldn't be in your office building. Then you had to be outside. Then you had to be 25 feet from the door outside.

And when you open the door to this, regardless of what you feel about cigarettes or not, it is illustrative of how the government operates: one step at a time. And I urge us to be very cautious as we start to take away what is one of our fundamental freedoms.

I yield back.

Chairman ISSA. I thank the gentleman.

We now go to the gentleman from Oklahoma, Mr. Lankford.

Mr. LANKFORD. Thank you, Mr. Chairman.

Gentlemen, thank you for being here. This is not something probably you anticipated a year ago, to think, "Gosh, wouldn't it be great sometime in 2012 if I could go be on a congressional hearing and just get berated publicly? Wouldn't that be just so fun?" So I thank you for being here.

And for Dr. Mitchell from Southwestern, I am a Southwestern graduate. It is an honor to be able to have you here. I did not know that you were attending, a Southwestern leader as well. So it is an honor that you are here as well and to be able to represent an institution that I am also an alumni of.

I have been fascinated to be able to hear the testimony of what this hearing is about. I have heard this hearing is about trying to prevent women from getting contraceptives and women's health. That is not what this hearing is about. That is a twisting off, to try to say that this is about some barbaric group trying to limit access of women to health. That is not what this hearing is about.

I had the implication that this hearing is about the fact that government is more compassionate than the church, that they care more about people than the church does, and that there are obvious needs here and the church is so out of step with culture that they don't know the issues of medication, and so the government is more compassionate.

I have even heard that this is about whether you will be jailed or not. It is an interesting comment to realize that there is a fine coming down on your organization of multimillions of dollars if you don't behave according to the administration's wishes.

Now, that creates an interesting conversation we might be able to have at another moment, in that all of you represent nonprofit institutions; is that correct? Do you pay Federal taxes? No. None of your institutions, because you are a nonprofit institution.

Do you realize the administration has said publicly numerous times that the penalties involved in the President's health-care plan are not penalties, they are fines—I am sorry, they are not fines, they are taxes. Well, if that is so, my recommendation to you—of course, I am not an attorney—if these penalties are to be considered taxes, not penalties, and you are a nonprofit organization that pays no taxes, perhaps these things do not apply to you, then, because you pay no tax.

Now, if they want to argue in front of the Supreme Court that these are penalties, not taxes—which apparently they are set up in March to argue that they are taxes and that they have the power to tax—then it will be interesting to see how the administration splits that hair, as well.

I have heard today that this is an attack on the administration, about religious liberties. Well, I don't agree, though there are areas that we could discuss about Hosanna-Tabor and the administration

fighting all the way to the Supreme Court to try to be involved in the hiring of ministers, which the Supreme Court, in a rare 9–0, disputed the administration and said ministers have the ability to be able to hire—or churches have the ability to be able to hire ministers as they choose. We could discuss how the Army is choosing to try to go in and edit the sermons of their chaplains.

But today this hearing is about, can this administration or any administration say, “I know your doctrine, but I have a different doctrine, and you will change your doctrine to my doctrine or I will fine you?” That is what today is about. Can any administration step into a church and say, “I disagree with your doctrine; you will change it to mine?”

Now, I have a historical question for that. And, Dr. Mitchell, I am going to pick on you because I am a Southwestern grad, as well.

In 1800—this was referenced earlier—Thomas Jefferson wrote an interesting letter to Danbury Baptist, actually, and made a reference that has been used over and over again about the wall of separation between church and state. He was assuring Danbury Baptist that the State would not go after the church in its doctrines and its teachings.

Am I correct or incorrect on that?

Mr. CRAIG MITCHELL. Yes, you are correct.

Mr. LANKFORD. Would you like to allude to any of that at all, about that particular letter that has been referenced a lot?

Mr. CRAIG MITCHELL. Well, the intent was to protect the church from the State.

Mr. LANKFORD. From the State. Not protecting the State from the church.

Mr. CRAIG MITCHELL. That is right.

Mr. LANKFORD. So, the other Dr. Mitchell, do you want to comment on that, as well?

Mr. C. BEN MITCHELL. I would. And I should disclose that I am also a Southwestern Seminary alumnus.

Mr. LANKFORD. Well, we are loaded here. This may be the first time in congressional history that three Southwestern grads are in the same room.

Mr. C. BEN MITCHELL. In our offices at the Ethics and Religious Liberty Commission of the Southern Baptist Convention, there is a portrait that hangs above the fireplace of John Leland, who was the Baptist minister who had entree to that discussion with the Danbury Baptists and our early founders. Religious liberty is a Baptist principle through and through, and I am happy to say we have had, historically, a contribution to make in that area.

Mr. LANKFORD. Was that doctrine intended, again, to—or was that letter intended to say to the folks at the Danbury Baptist Association, “We will make sure as a Federal Government we are not intruding on your religious rights?”

Mr. C. BEN MITCHELL. Yes, sir, that is absolutely right.

Mr. LANKFORD. Any other comments on that before I yield back my time?

With that, thank you, gentlemen, very much for being here. I am honored to be able to have your time here and to be able to be here to express this on this key issue.

With that, I yield back.

Chairman ISSA. I thank the gentleman. The gentleman yields back.

We now go to the gentleman from Arizona, Dr. Gosar, for 5 minutes.

Mr. GOSAR. Thank you very much, Mr. Chairman.

You know, first of all, I have always been one of personal accountability and personal responsibility. So when you go trampling on the Constitution, you get the full regards of the Constitution. I am tired of politicians and constitutional attorneys picking and choosing the language of which they want to disdain for the Constitution to show that it upholds.

We have referenced the letter from the Danbury Baptists, and I think it is appropriate that we go through the full context so that it is part of the record, and so I would like to recite it. This is from a letter of Jefferson to the Danbury Baptists on January 1, 1802.

And he says, "Gentlemen, the affectionate sentiments of esteem approbation which you are so good as to express toward me on behalf of the Danbury Baptist Association give me the highest satisfaction. My duties dictate a faithful and zealous pursuit of the interests of my constituents, and in proportion as they are persuaded of my fidelity to those duties, the discharge of them becomes more and more pleasing.

"Believing with you that religion is a matter which lies solely between Man and his God, that he owes account to no other for his faith or his worship, that the legitimate powers of government reach actions only and not opinions, I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should 'make no law respecting an establishment of religion or prohibiting the free exercise thereof,' thus building a wall of separation between church and State.

"Adhering to this expression of the supreme will of the Nation in behalf of the rights of conscience, I shall see with sincere satisfaction the progress of those sentiments which tend to restore to man all his natural rights, convinced he has no natural right in opposition to his social duties.

"I reciprocate your kind prayers for the protection and blessing of the common father and creator of man, and tender you for yourselves and your religious association assurances of my high respect and esteem. Thomas Jefferson. January 1, 1802."

With all due respect, when the President asked for a problem, he is just like any of us, he is a man, he is right and he is wrong. He has stepped into this, he has made it a problem. And who better than another President, Thomas Jefferson, to set the record straight?

We need to start looking at the full context, not picking and choosing the simple words that we want to utilize to support ourselves. We need to get back to the doctrine and understand the full discourse of how we look at the separation of the First Amendment and religious freedom. And I am tired of people picking and choosing, because when we look back at history, the constitutional scholars who say that they represent it do more damage than they do support.

And, with that, I would like to yield to my good friend from South Carolina, Mr. Mulvaney.

Mr. MULVANEY. I thank my colleague.

And very briefly I want to try and expand this conversation a little bit. We have heard a lot of discussion today about Catholic hospitals or Jewish charities, but it strikes me that we should extend the conversation into the private sector, as well.

And I would suggest to you, and I ask Reverend Harrison, for example, if I am a devote Lutheran businessman and I have 75 people working for me, am I not as aggrieved as the church is if I am forced to offer these particular services to my employees?

Rev. HARRISON. I think, in fact, you are, as a matter of fact.

And even as you said that, I can think of a wonderful family that has treated its employees like gold for its entire existence. Employees love to work at this large organization that I am thinking of. And yet these are very devote people who absolutely loathe acting against their consciences.

Let me—at the risk of taking some of your time, Mr. Congressman, I really loathe the partisan nature of this discussion. Ninety-eight percent of what I do, what the Missouri Synod does, is completely bipartisan. We represent a large church body. The constituents are in some way evenly divided between Democrats and Republican. We do not operate in a partisan way.

I also stand at an altar regularly to administer the sacrament. And in the prayers of the church, I pray personally for the President, his wellbeing, and the wellbeing of our Nation. I personally get on my knees every single morning in my office and I pray for the President of this country and this government.

Luther bids us in a Small Catechism defense, “Speak well of him and put the best construction on everything.” I know this is a different game here; this is hardcore politics. I am here for one reason. I am here because there is a narrow but very significant provision in the HHS provisions that is, I believe, very dangerous to religious people with our kind of convictions. And I believe it is also dangerous to any religious people who have unique convictions. So that is why I am here.

Mr. MULVANEY. Reverend, ordinarily we are very protective of our time here. I thank my colleague for yielding it to me. And I can assure you that I have never been more pleased to yield it to someone else. So thank you, sir, for your comments.

With that, I yield back.

Rev. HARRISON. My apologies.

Chairman ISSA. We now go to what I believe will be the last of the members of the committee, the gentleman from Illinois, Mr. Walsh, for 5 minutes.

Mr. WALSH. Thank you, Mr. Chairman.

And thank you all for enduring this last couple of hours.

My friend from Virginia said this hearing is a sham, and he and I may agree on that, because for the life of me I don't know why you all had to be called up here in front of us. Our Founders placed you and your concerns on this issue on a higher standing than we all are. So there is a big part of me that wants to apologize to each and every one of you for having to be here.

This is not about women. This is not about contraceptives. We know—you have said it, we have said it up here—this is about religious freedom, this is about religious liberties. We could be talking about anyone, a Republican or Democrat who doesn't want to serve in a war because of their religious preferences. We could be talking about a Muslim hospital that doesn't want to serve a particular food in their hospital cafeteria because of their deep-seated religious beliefs. So let's put that aside.

Thomas Jefferson was referenced. We all famously know that Thomas Jefferson requested three things on his tombstone: the father of the University of Virginia, the author of the Declaration of Independence, and the author of Virginia's bill of establishing religious freedoms. And in that bill, he said, "To compel a man to furnish contributions of money for the propagation of opinions which he disbelieves is sinful and tyrannical."

John Garvey, who is the President of the Catholic University of America, who I believe will speak in the next panel, put it perfectly. He said, Consider these two health policies—consider these two insurance policies. Policy A, an employer is required to provide its employees health insurance that covers birth control. Policy B, an employer is required to provide its employees health insurance. The health insurance company is required to cover birth control.

As he says, and it almost made me laugh, I can see where someone could disagree with both of those policies or agree with both of those policies, but for the life of me I don't understand what the difference is between those two policies, and I don't know how you can agree with one and disagree with another.

I have a father in Saint Mary's Catholic Church back in Woodstock, Illinois, who told me last week that after the President's attempt at a compromise, he is even more disappointed. As he said, it looks like an accounting gimmick. First, it was an insult to our liberty. Now, it is an insult to our intellect, as well.

Did any of you—maybe I missed this earlier on our panel—support ObamaCare in its beginning, 2 or 3 years ago?

Bishop LORI. The Catholic Church is on record as supporting access to health care since 1919.

Mr. WALSH. Agreed. Did you support this legislation?

Bishop LORI. We supported the principle of universal access, but we did not support the bill and all of its particulars.

Mr. WALSH. Reverend.

Rev. HARRISON. It is our religious policy, believing there is a strict separation between the two kingdoms, the religious and the governmental, that our church shouldn't be spouting off on every government issue. So we took no official position on—you guys do a great job of that.

Mr. WALSH. Okay. Spouting off.

Dr. Mitchell.

Mr. C. BEN MITCHELL. No, as Baptists, we don't take a position as a denomination per se. But no one, either, has recommended or commended—

Mr. WALSH. Rabbi.

Rabbi SOLOVEICHIK. Religious people on both sides of the aisle can agree or disagree on larger questions of health care, but both

should be extremely distressed when the religious freedoms of anyone in America is threatened.

Mr. WALSH. Dr. Mitchell.

Mr. CRAIG MITCHELL. As the previous Dr. Mitchell said, the Southern Baptists don't take official positions on this, but—

Mr. WALSH. Okay.

Mr. CRAIG MITCHELL [continuing]. We weren't for it.

Mr. WALSH. My time is running out. I have two quickies.

Rabbi, why do you think the President—give me a 20-second answer—is pursuing this so vigorously?

Rabbi SOLOVEICHIK. I really—I asked the same question. And I just don't understand why he is seemingly so—in this situation, the President and the administration just do not seem sensitive to the religious concern—

Mr. WALSH. Okay. Just as my time runs out, let me quickly rephrase the question my good friend from South Carolina asked. At the end of the day, if it comes down to listening to your God and/or listening to your government, where are you going to fall?

Rev. HARRISON. Thomas Jefferson, I have his Bible from the Smithsonian, the famous Bible he cut all to pieces. And I would have something to say against some of the bits he took out, but he did leave in Matthew 22. "They say unto him, Caesar's. Then saith he unto them, Render therefore unto Caesar the things which are Caesar's and unto God the things that are God's."

Mr. WALSH. Is it safe to assume that that is where all of you would fall?

Rabbi SOLOVEICHIK. And I would add, Congressman, since you mentioned the Virginia Statute of Religious Freedom, of which Jefferson was rightly so proud and to which Jews and all Americans have a great debt to him for that, I don't remember the exact text, but after establishing religious freedom, the actual bill that he composed concludes by saying something like, "And if any other legislature does seek to limit this freedom, we are hereby stating that they do so in contravention of natural right."

Mr. WALSH. Thank you.

Chairman ISSA. I thank the gentleman.

If I could ask our panel, would you remain for just 10 short additional minutes for the last two Congressmen that we had by unanimous consent?

With that, the gentlelady from Connecticut is recognized for 5 minutes.

Ms. DELAURO. I thank you very much, Mr. Chairman and also the ranking member.

I just want to express my view on the new guideline. I think that in releasing national guidelines for preventive health coverage by 28 States before them that includes contraceptive services but a whole variety of other services as well, the administration made a strong and long overdue stand on behalf of women's health, and at the same time upholding the religious liberty of churches, mosques, synagogues, and related institutions.

Last Friday—and even though, as I said earlier, the guidelines exempted churches and other houses of worship, as it should—I believe in that exemption—the President provided more flexibility to charities, to hospitals, and to other kinds of religious organizations.

Hospitals are not just providers but employers. As providers, nothing has changed. They do not have to prescribe, dispense, provide for any contraceptive services. As an employer, there are kinds of employer regulations on the books that faith-based institutions are bound to respect. Suppose someone decided not to pay the minimum wage. Would we accept that?

Now, just further, one note, is that the constitutional issue, constitutional expert David Boies, who appeared on TV last week, said there really isn't a constitutional issue involved in this issue. The First Amendment to the Constitution prohibits establishment of religion, meaning that you can't have the government saying that you have to follow certain religious beliefs, and guarantees free exercise. That means everyone is free to exercise the religion they choose. There is nothing in the Constitution that says that an employer, regardless of whether you are a church employer or not, isn't subject to the same rules as every other employer.

I have a particular question that I would like to ask, and this is about, actually, contraception as a medical treatment. As I was preparing for the hearing today, I was contacted by people who wanted the committee and the public to understand that contraceptives are often used to treat potentially life-threatening diseases. Let me just give you a couple of examples.

We heard an account from a woman in Kentucky, and she said, "Birth control for me isn't about preventing conception. I have to take the pill because endometriosis runs in my family. When I was 5, I watched my mother suffer a massive hemorrhage because of the disease. My doctor put me on the pill to stave off the disease. To me, birth control means preserving my fertility and my life."

This woman may not be able to have children later if she does not take this pill for medical reasons. It is medical reasons.

We heard from a number of doctors. One account from a doctor in Chicago: "My patient is 45 years old. She has four children. She suffered a stroke 2 years ago. To prevent future strokes, she needs to take a blood thinner. Her condition is complicated because she experiences heavy bleeding. An IUD is the safest option to reduce that bleeding. Her husband works as a facilities engineer at a large Catholic hospital. His insurance will not cover contraception for any reason." An employer's refusal to cover this necessary medication creates a hardship for her. It is about \$1,000 in the cost for that medical device.

I am going to give you a personal example. I am a survivor of ovarian cancer. This March will be 25 years. There are so many studies—I am not a doctor, I am not a scientist, but there are medical studies today that show—and we can give you all the citations—that women who do take the pill have a much lower risk of developing ovarian cancer: after 1 year of use, 10 to 12 percent lower. After 5 years of use, 50 percent lower. Over 15,000 American women died because of ovarian cancer just last year. I am alive because of the grace of God and because of biomedical research.

And I just have to ask each of you, are you morally opposed to allowing women who work in your facilities, many of whom are non-religious, non-whatever the denomination—they were not hired for a religious purpose. Are you opposed to allowing them to take

a pill or to get an IUD in cases where their lives depend on it and when we know that it could lower the risk of ovarian cancer?

Chairman ISSA. The gentleman lady's time has expired, but—

Ms. DELAURO. I have 25 seconds left, according to my clock here.

Chairman ISSA. Actually, you are 29 over.

Ms. DELAURO. Oh, I am sorry.

Chairman ISSA. No problem.

But you may answer her question.

Rev. HARRISON. I would like to respond that our health plan will, in fact, cover contraceptives used for such health reasons.

And let me also say, Martin Luther said one time, "Doctrine is heaven, life is Earth." I was an inner-city pastor for quite a while. Spent a lot of time in slums all over the world. And these ears of this pastor have heard every possible situation and malady of life you could ever imagine.

We have principles that guide us as Lutherans. We know that those principles meet real life and the real lives of people are hurting, and we accommodate wherever we can. We are not rigid kooks. We care about people, and that is our business.

Ms. DELAURO. And this rule accommodates women's health services as well as religious liberty.

Chairman ISSA. I thank the gentlelady.

Ms. DELAURO. Thank you.

Chairman ISSA. Anyone else who wants to just answer her question briefly?

Bishop.

Bishop LORI. Sure. Let me just say that people who come to work for us, whether it is the diocese or Catholic Charities or a university, they are coming to be part of a mission. These things are not side businesses; they are part of our mission.

And, second, our Catholic moral theology, as I have indicated, recognizes that the same drug can be used for different purposes with different effects, and our plans reflect that. So we should be given credit for the nuance and the understanding that we have already brought to the table. All the more reason for the government not to move in and try to force our hand now.

Chairman ISSA. So it is basically true, to the lady's question, all of you, to the extent that you are involved in health care, would provide health care for the reasons that did not go directly against your faith, such as the Bishop said.

Ms. DELAURO. As this rule does not go against anyone's faith. It provides an accommodation—

Chairman ISSA. We now go to the gentleman from South Carolina for 5 minutes.

Mr. MULVANEY. And I thank the chairman and the ranking member and the other members of the committee for the opportunity.

I am not a member of this committee, and I do value this chance to ask very briefly, follow up on the question I was speaking on a few minutes ago, which deals not with the impact of this bill, not necessarily just the exemption, but the bill on men and women of religious conviction who own and operate businesses and have employees.

And I encourage you gentleman, each of you, to consider that and when you leave here today to contemplate that, as well. Because that infringement of religious freedoms existed before the current discussion about the HHS rule and, even assuming a satisfactory resolution of religious exemptions for religious organizations, will exist after that resolution.

Men and women of religious conviction were put in this position at the very initial passing of this law, and even if religious organizations are ultimately exempted in a way that you gentlemen would find acceptable, I would put it to you that members of your congregations will still be similarly situated, and still be put in the same condition.

That being said, and finally, I have a request, specifically directed to Your Excellency Bishop Lori, but also to the rest of you gentlemen as well. There were various organizations that I felt were very accurately described today by colleagues on the other side as having supported bits and pieces or all or part of this legislation when it was originally debated several years ago. And I would encourage each of you to consider the possibility that using a secular Federal Government to help advance religious principles, regardless of how admirable they might be—I'm familiar with the Catholic social justice teaching and doctrine, but to use the Federal Government to accomplish those things may in both the short run, as we are learning today, and in the long run be unwise. And to paraphrase many politicians, many great thinkers from the beginning of this country up to recent times, I would suggest to you gentlemen, all, that the Federal Government that is big enough to give to you all of the social justice that you pursue is also big enough to take from you all of the religious freedoms that you have.

And with that I yield back, and I thank the chairman.

Chairman ISSA. Would the gentleman yield?

Mr. MULVANEY. Happily.

Chairman ISSA. As we come to a close, I don't want to extend the time any further. I just want to sort of give you one opportunity, because there was an allegation that we were conducting a sham from this side of the dais. I will deal with that one in my own way, but your comments on the opportunity you have had today, and whether or not the committee has been fair to your opportunity to have your views, and whether you would do it again if asked to come for a similar hearing.

Basically, do you think this was a sham relative to your side of the dais? Bishop.

Bishop LORI. Mr. Chairman, I thank you for the opportunity to testify.

I'd just say that I bring to the table a commitment to religious freedom and to the church's social teaching that goes well beyond the next election cycle. If there is one thing the Catholic Church can do, it can sort of think for the long haul. We are a long-haul church, and what we recognize is that if the principle of religious freedom is breached now, it's not going to be around for the long haul. That's why I'm here. That's why I got up at 3:15 this morning.

Chairman ISSA. Before anyone else answers, I do have to put my plug in. I have no bishops. I'm not a Roman Catholic. My sister

Peggy, at Siena Heights College in Adrian, Michigan, would feel that it was appropriate that you know what a great job that Catholic University did in at least getting me to this limited position I now hold.

Anyone else want to comment?

Mr. C. BEN MITCHELL. Mr. Chairman, religious liberty is not a partisan political issue, in my view. It is the foundation of liberal democracy grounded in human dignity in the image of God and humanity. Therefore, I will happily, as the bishop said, get up at 3 a.m., if necessary, and defend the principle of religious liberty and freedom of conscience before a Republican audience, a Democratic audience, or an Independent audience, or anyone else. It is who I am. It is my committed belief, and I believe it should be protected.

Chairman ISSA. Rabbi.

Rabbi SOLOVEICHIK. Chairman Issa, I thank you for having us all here today. The notion that we are here to push a political agenda could not be more untrue.

I would just note, one of the Representatives referred to the icons being held up as Democratic icons. I just want to say as a religious American, as an American, and as an American clergyman, that someone like Martin Luther King, Jr., is not a Democratic icon or a Republican icon; he is an American icon, and that's because we all as Americans care about liberty and equality as the two great pillars of what America is all about.

You asked, would we come here again? I would certainly come here again, but I hope that I don't have to, because—not because we haven't enjoyed your hospitality, but because I hope that the administration realizes that they have made a mistake, and that they return us as a country to the principles of liberty that has guided this country for hundreds of years.

Chairman ISSA. Thank you.

I want to thank all of you. We are going to quickly take a recess and set up for the next panel, and many of them are now on short fuses. So thank you all. We will be back in about 3 minutes.

[Recess.]

Chairman ISSA. We will now hear testimony from our second panel of witnesses. And with that, I would note that Professor John Garvey is president of Catholic University of America. And because we have run quite late, we will be taking his testimony, then if there are any specific questions for Mr. Garvey, we will take them out of order, then Mr. Garvey will remain as long as he can as the other panel go through their testimony. This is an accommodation that I hope you all understand.

And our second witness will be introduced by the gentleman from North Carolina.

Mr. MCHENRY. Thank you, Mr. Chairman.

Dr. William Thierfelder is the president of Belmont Abbey. He is the 20th president of my alma mater, having served in that capacity since 2004. He is a licensed psychologist; had a distinguished career not only as an NCAA Division I athlete, but an Olympian. He and his children live in the suburbs of Charlotte in Gastonia, my hometown, and, most importantly, he is the husband of—to Mary. And so I'm very proud that he is here today, and thank you for the work that you have taken on at Belmont Abbey.

Chairman ISSA. There is an advantage to having a detailed introduction.

With that, we recognize also Dr. Oliver, who is president of East Texas Baptist University. I'm sure there will be other alumni there.

Dr. Garrett is senior vice president of the academic affairs at Oklahoma Christian University, previously mentioned.

And Dr. Laura Champion is medical director of the Calvin College health services.

And is Barry Lynn here? Barry Lynn was invited by the committee; apparently is not here. Would you please remove the name?

And with that, pursuant to the rules of the committee, we will swear in our second panel. Would you please rise to take the oath, and raise your right hands.

[Witnesses sworn.]

Chairman ISSA. Let the record indicate all witnesses answered in the affirmative.

Please take your seats, and as previously announced, Mr. Garvey, you are up first.

**STATEMENTS OF JOHN H. GARVEY, PRESIDENT, THE CATHOLIC UNIVERSITY OF AMERICA; WILLIAM K. THIERFELDER, PRESIDENT, BELMONT ABBEY COLLEGE; SAMUEL W. "DUB" OLIVER, PRESIDENT, EAST TEXAS BAPTIST UNIVERSITY; AL-LISON DABBS GARRETT, SENIOR VICE PRESIDENT FOR ACADEMIC AFFAIRS, OKLAHOMA CHRISTIAN UNIVERSITY; AND LAURA CHAMPION, M.D., MEDICAL DIRECTOR, CALVIN COLLEGE HEALTH SERVICES**

**STATEMENT OF JOHN H. GARVEY**

Mr. GARVEY. Thank you very much, Mr. Chairman, and thanks to the committee for inviting me to speak here today. I am the president of Catholic University of America.

Let me say a couple of words about the January 20th final regulation that the Department of Health and Human Services has promulgated, and then a word or two about the February 10th revision.

On January 20th, HHS announced a rule that requires most health insurance plans to cover with no copay sterilization procedures and prescription contraceptions including pills that act after fertilization to induce abortions. The rule includes a fairly narrow exemption. It doesn't cover colleges and universities like my own. It doesn't cover religiously affiliated hospitals and health care systems, or religious social service organizations like Catholic Charities.

Consider the effect that this rule has on the Catholic University of America, my institution. We teach our students in our classes that marriage is a sacrament in which spouses share in the creative work of God. We teach that it is wrong for couples to close themselves off to the possibility of life. We teach that abortion is a grave wrong, and we reinforce these messages in the work of student life and in campus ministry, in our student organizations, and in the daily interactions of faculty and staff with students.

The rule forces the university to violate its convictions in two ways. First, it requires the university to pay for drugs and procedures that we view as morally wrong. A few minutes ago the Congressman from Illinois referred to a provision in Jefferson's bill for religious liberty. Let me quote again what Jefferson said. Jefferson said that, "it was sinful and tyrannical to compel a man to pay for the propagation of opinions which he disbelieves." How much more evil to compel financial support for putting those opinions into practice? The regulations order Catholic University to become the provider of contraceptives, sterilizations and abortions for its students, faculty and staff.

Second, the rule forces us to deny one part of our operation what we affirm in another. We teach our students in our classes, in our sacraments, and in the activities of student life that sterilization, and contraception, and abortion are wrong. The rule requires our staff to offer these very services to our students as part of our health insurance program. It makes hypocrites of us in our moral teaching.

In response to widespread criticism of the rule, the President last week announced a scheme that was designed to allay concerns about religious freedom while still providing the same services to all women affected by the final rule. The proposed solution is this: When religious institutions like Catholic University object to including mandated services in their health plans, our insurance company will provide them.

It's hard to see how this revision changes the picture. Greg Manchuk, an economics professor at Harvard University, makes this observation: Ultimately, he said, all insurance costs are passed on to the purchaser. So I cannot see how the February 10th revision is different in any way from the final rule other than using slightly different words to describe it.

In both cases the Federal Government orders us to buy an insurance policy. In both cases the policy must cover mandated services. In both cases we pay the bill. The only real change is that the insurance company, rather than the university, notifies subscribers that we cover contraceptives.

The administration suggests that there is a difference because insurance companies will discover that their costs actually go down. Wider contraceptive use will mean fewer pregnancies and lower indirect costs like productivity losses. If there are no added costs, the implication is, Catholic University won't really have to pay for the mandated services.

What if I called this the shazam theory? It resolves the intrusion on religious liberty by making the compelled contributions magically disappear. But there are two problems with the theory. One, I suspect that the proposed cost savings are imaginary and not real. We do know that mandated services have a cost. Senators Shaheen and Murray and Boxer have estimated the cost of contraceptives alone at \$600 per woman per year. These costs will certainly be included in the price of our insurance policy. The insurance companies haven't hesitated in the past to cover the cost of things like gym memberships that actually do save money. They haven't done this yet with contraceptives. Maybe they haven't yet discovered the hidden savings in the administration's shazam the-

ory. But I worry that this is a case where politicians have made a bet that they cannot with the private market, and the stakes they are playing with are our religious freedom.

I said there were two problems, and the second one is this. From a moral point of view, the cost savings don't really matter even if they are real. Suppose, just to take an extreme, an imaginary example, the administration believably could reduce overall health care costs by covering infanticide by young mothers who found their children a burden. And suppose that HHS devised a plan under which the necessary drugs would be charged to Catholic University's account. Would we have no moral objection to that plan if the government could show that it saved us money? The point is that we shouldn't be forced to pay for activities and processes that we think are immoral.

I think a more likely explanation for the rule is that HHS is acting on a political agenda about how women should live their sex lives. The February 10th announcement discloses this agenda in fairly plain terms. Here is what it says: "A broader exemption," the announcement states, "would lead to more employees having to pay out of pocket for contraceptive services, thus making it less likely that they would use contraceptives, which would undermine the benefits described above." HHS might wish to increase the rate of abortions and sterilizations and contraceptive use by students and employees at the Catholic University of America. It has shown a desire to conscript the university and its insurer in the service of that agenda. But it is our religious belief that these activities are wrong, and we think that a decent respect for the principle of religious liberty should leave us free to act on our belief.

Thank you.

[The prepared statement of Mr. Garvey follows:]

**THE CATHOLIC UNIVERSITY OF AMERICA**

*Office of the President  
Washington, DC 20064*

**TESTIMONY OF JOHN GARVEY, PRESIDENT  
OF THE CATHOLIC UNIVERSITY OF AMERICA**

*Before the U.S. House of Representatives, Committee on Oversight and Government Reform*

**February 16, 2012**

THE CATHOLIC UNIVERSITY OF AMERICA

Good morning. My name is John Garvey. I am the President of The Catholic University of America. The University was founded by the American Catholic bishops, and received formal papal approval 125 years ago this year. It was created as a graduate institution of higher learning after the pattern of the Catholic University of Louvain in Belgium, The Johns Hopkins University (1876), and the German research universities. Since 1904 it has also educated undergraduates.

The University's bylaws vest the determination of policy and the supervision of the management of the corporation in the Board of Trustees. 24 of the Board's 48 elected members must be clerics; at least 18 of those 24 must be members of the United States Conference of Catholic Bishops. Cardinals who are diocesan bishops in the United States are counted among the clerical members of the Board. The Archbishop of Washington is *ex officio* the chancellor of the University. The President of the University is appointed by the Board and approved by the Vatican Congregation for Catholic Education.

The University comprises twelve schools, including Arts & Sciences, Engineering, Nursing, Music, and others. Three of the schools – Philosophy, Theology and Religious Studies, and Canon Law – are pontifical faculties. This means that they are accredited by the Holy See, and that their courses, programs, and degrees have canonical effects.

The Board of Trustees adopted this mission statement at its December 2006 meeting. The statement applies to all the schools in the University, not just to its pontifical faculties:

As the national university of the Catholic Church in the United States, founded and sponsored by the bishops of the country with the approval of the Holy See, The Catholic University of America is committed to being a comprehensive Catholic and American institution of higher learning, faithful to the Teachings of Jesus Christ as handed on by the Church. Dedicated to advancing the dialogue between faith and reason, The Catholic University of America seeks to discover and impart the Truth through excellence in teaching and research, all in service to the Church, the nation, and the world.

Throughout its history the Rector (now called the President) of the University has been a Catholic. Of its 15 Presidents, 12 have been clerics. The University does not require that faculty and staff be Catholic, though 52% of the faculty are. The University does, however, inform all employees at the time of their appointment of their obligation to support the University's Catholic mission. The appointment letter sent to each new University employee states:

The Catholic University of America was founded in the name of the Catholic Church and maintains a unique relationship with it. The University's operations, policies and activities reflect this foundation and relationship and are conducted in accordance with its stated mission. Regardless of their religious or denominational affiliation, all employees are expected to respect and support the University's mission in the fulfillment of their responsibilities and obligations appropriate to their appointment.

All new staff employees participate in an orientation conducted by the Office of Human Resources. During the orientation new employees receive a copy of the University's mission statement.

The student body in total numbers almost 7,000. Undergraduates comprise 3,633 of that total; 81% of them are Catholic. 59% of the graduate students are Catholic. Most undergraduates are housed on campus in residence halls that are predominantly (and will soon be entirely) single-sex. Priests, religious women, and married couples live among the students in the residence halls – an arrangement the University has undertaken to enlarge in recent years. Undergraduate student ministers (predominantly juniors and seniors who work for the Office of Campus Ministry) also live among the students in the residence halls and work to spread the message of the gospel among their classmates by word and example.

The Office of Campus Ministry has principal responsibility for the care of students' spiritual welfare. It comprises a full-time staff of ten, plus five graduate assistants, 15 work-study employees, 19 student ministers, and three student sacristans. A majority of undergraduate students attend mass weekly or oftener.

Campus Ministry and the Office of Student Life recognize more than 50 student groups that promote the life of the faith among undergraduate and graduate students. Groups like Esto Vir, Gratia Plena, and Live Out Love affirm the virtue of chastity. Students for Life promotes respect for life from the moment of conception until natural death. This year more than 200 students volunteered to host some 1,200 high school students on campus for the annual March for Life.

#### THE HEALTH AND HUMAN SERVICES JANUARY 20 REGULATIONS

Thomas Jefferson wanted to be remembered on his tombstone for three things: that he was the father of the University of Virginia, and the author of the Declaration of Independence and of Virginia's Bill for Establishing Religious Freedom (1786). Along with Madison's Memorial and Remonstrance, Jefferson's Bill for Establishing Religious Freedom was one of the most important documents defining the principle of religious liberty that found its way a few years later into the first amendment. Jefferson's Bill says "that to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves is sinful and tyrannical[.]" The Department of Health and Human Services (HHS) has done precisely that in its recent regulations concerning mandated services.

On August 1, 2011 HHS published an interim final rule requiring most health insurance plans to cover, at no added cost to subscribers, sterilization procedures and prescription contraceptives, including pills that act after fertilization to induce abortions.<sup>1</sup> On January 20, 2012 HHS announced its intention to make the rule final.

The final rule includes an exemption for churches and religious orders. The exemption does not cover colleges and universities (like The Catholic University of America), religiously affiliated hospitals and health care systems, or religious social services organizations (like Catholic Charities). To be exempt, institutions must exist for the purpose of inculcating religious values. They must also employ and serve "primarily persons who share the religious tenets of the organization."<sup>2</sup> The final rule would thus force a Catholic hospital or soup kitchen, if it wanted an exemption, to ask not "Are you sick (or hungry)?" but "Are you Catholic?"<sup>3</sup>

Consider how this rule bears on nonexempt religious institutions like The Catholic University of America. We teach our students in our classes that marriage is a

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<sup>1</sup> 76 Fed. Reg. 46621 (Aug. 3, 2011).

<sup>2</sup> 45 C.F.R. § 147.130(a)(1)(iv)(B)(2)-(3).

<sup>3</sup> Even if Ascension Health and Catholic Charities hired only Catholics and limited their services to Catholics, they would still not be exempt. The rule also requires that an exempt organization must be "a nonprofit organization as described in section 6033(a)(1) and section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code of 1986, as amended." 45 C.F.R. § 147.130(a)(1)(iv)(B)(4). Those sections refer to the few nonprofits (churches, their integrated auxiliaries, and religious orders) that are excused under the tax law from filing an IRS Form 990.

sacrament in which spouses share in the creative work of God. We teach that it is wrong for couples to close themselves off to the possibility of life, through artificial methods of contraception or through sterilization.<sup>4</sup> And we teach that abortion is a grave wrong because “[h]uman life must be respected and protected absolutely from the moment of conception.”<sup>5</sup> We reinforce these same messages in the evangelism of Campus Ministry, in the work of our Student Life division, in the activities of our student organizations, and in the daily interactions that faculty, staff, and administration have with our students.

The final rule forces the University to violate its deepest convictions in two ways. First, it requires the University to pay for drugs and procedures that we view as morally wrong, often gravely so. Jefferson said it was sinful and tyrannical “to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves.” How much more evil to compel financial support for putting those opinions into practice. The mandated services regulations order The Catholic University of America to become the provider of contraceptives, sterilizations, and abortions for its students, faculty, and staff.

Second, the rule forces us to deny in one part of our operation what we affirm in another. We teach our students in our classes, in our sacraments, and in the activities of Student Life and Campus Ministry that sterilization, contraception, and abortion are wrong. The rule requires our Human Resources staff to offer these very services to our students at no additional cost, as part of our health insurance program. It makes hypocrites of us all, in the most important lessons we teach.

#### THE FEBRUARY 10 REVISION

In response to extraordinarily widespread criticism of the January 20 final rule, the President announced on February 10 that HHS had designed a scheme that would relieve some additional religious institutions from the burden of providing mandated services, while still providing those services to all women affected by the final rule. The proposed solution is this: when a religious institution like The Catholic University of America objects to including mandated services in its health plan, the insurance company with which we contract will have to furnish those services to our subscribers (at no added cost to the subscribers).

It is hard to see how this revision changes the picture. Here is how Economics Professor Greg Mankiw at Harvard University describes it:<sup>6</sup>

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<sup>4</sup> *Humanae vitae* 14 (July 25, 1968); *Familiaris consortio* 32 (Nov. 2, 1981); Catechism of the Catholic Church 2368-2370.

<sup>5</sup> *Id.* at 2270.

<sup>6</sup> <http://gregmankiw.blogspot.com/>

Consider these two policies:

- A. An employer is required to provide its employees health insurance that covers birth control.
- B. An employer is required to provide its employees health insurance. The health insurance company is required to cover birth control.

I can understand someone endorsing both A and B, and I can understand someone rejecting both A and B. But I cannot understand someone rejecting A and embracing B, because they are effectively the same policy. Ultimately, all insurance costs are passed on to the purchaser, so I cannot see how policy B is different in any way from policy A, other than using slightly different words to describe it.

In other words there is no real difference between the January 20 and February 10 policies. In both cases the cost of mandated services will be rolled into the cost of an insurance policy which federal law requires the University to buy.<sup>7</sup> The only real change is that the insurance company, rather than the University, notifies subscribers that the policy covers mandated services with no co-pay.

The administration suggests that there really is a difference, because insurance companies (now that they have been ordered to provide free services) will discover that their costs actually go down. The February 10 announcement claims that there are “significant cost savings to employers from the coverage of contraceptives. [These include] both the direct medical costs of pregnancy and the indirect costs such as employee absence and reduced productivity.”<sup>8</sup> Because there will be no added costs, religious institutions will not actually have to pay for the mandated services. We might call this the Shazam Theory. It resolves the intrusion on religious liberty by making the compelled contributions magically disappear.

We do know that coverage of surgical sterilizations and prescription contraceptives (including abortifacients like ella) has a cost. Senators Shaheen, Boxer, and Murray estimate that the cost of contraceptives alone is \$600 per woman per year.<sup>9</sup> These costs will certainly be included in the future price of insurance policies. Insurance companies, acting in response to market forces and the profit motive, have not hesitated to cover the cost of things (like subscriber gym memberships) that actually do save the companies money. Perhaps they have not yet discovered the savings

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<sup>7</sup> Under our plan the University pays between 64% and 74% of the total cost (depending on the option selected) for nearly all employees.

<sup>8</sup> The announcement has not yet been published in the Federal Register. The quotation in text is taken from the on-line version of *Group Health Plans and Health Insurance Issuers Relating to Coverage of Preventive Services Under the Patient Protection and Affordable Care Act* TAN 8 (February 10, 2012).

<sup>9</sup> Jeanne Shaheen, Barbara Boxer and Patty Murray, *Why the Birth-Control Mandate Makes Sense*, Wall St. Journal A15 (Feb. 8, 2012).

possibilities inherent in the administration's Shazam Theory. But I worry that this is a case where participants in the political market have made a bet that they can outwit the private market, and the stakes they are playing with are our religious freedom.

Here is a more important point. From a moral point of view, the administration's cost savings don't matter even if they are real. When a student who is enrolled in our plan purchases contraceptives at the local CVS pharmacy, CVS will seek payment from the insurance company. The payment for that service will be charged to our account, funded by our contributions. The Shazam Theory assumes that charges for *other* drugs and services will go down as a result of contraceptive use. But it is still true that the University and its subscribers are being forced to pay for sterilizations, contraceptives, and abortions, and those are activities we view as immoral.<sup>10</sup>

A more likely explanation for the rule is that HHS is acting on a political agenda about how women should live their sex lives. The February 10 announcement discloses this agenda in fairly plain terms. "A broader exemption," the announcement states, "would lead to more employees having to pay out of pocket for contraceptive services, thus making it less likely that they would use contraceptives, which would undermine the benefits described above."<sup>11</sup> HHS might wish to increase the rate of abortions, sterilizations, and contraceptive use by students and employees at The Catholic University of America. It has shown a desire to conscript the University and its insurer in the service of that agenda. But it is our religious belief that these activities are wrong. A decent respect for the principle of religious liberty should leave us free to act on our belief.

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<sup>10</sup> Suppose the administration believed that we could reduce our overall health care costs by covering infanticide for young mothers who found their children a burden. And suppose that HHS devised a plan under which the necessary drugs would be charged to Catholic University's account. Would we have no moral objection to that plan if the government could show that it saved us money?

<sup>11</sup> *Group Health Plans*, *supra* note 8, at TAN 14.

Chairman ISSA. Thank you, and as promised, I will recognize myself. I'm only going to take 1 minute.

Just to review. If you—if you save money by some procedure that you find morally wrong within the teaching of your church, you still wouldn't do it.

Mr. GARVEY. We certainly wouldn't.

Chairman ISSA. And if the government determines there is money savings by this procedure, you, in fact, shouldn't be forced to do it on behalf of saving the government money.

Mr. GARVEY. The Catholic Church is not alone in teaching and believing that it is wrong to do an immoral act in order to save money or achieve some other desirable end.

Chairman ISSA. And the previous panel said, basically, Caesar can do it if Caesar wants to; just don't have us do it for Caesar. So, let me just ask the question. Since Planned Parenthood receives huge amounts of money, contraceptions are given out at Federal and State level at no cost to people regularly, hasn't government already, under the Secretary's auspices, determined that they are giving out contraceptions? I'm not going to talk about all of the procedures, but contraceptions. They already give it out at government expense to people who apply for it in most, if not all, areas. So in other words, the Secretary's \$600 saves money. She is already doing that with government money, isn't she?

Mr. GARVEY. The controversy that we are discussing today is sometimes presented as a conflict, or a contest, or a dispute, or a weighing of the rights of religious liberty on the one hand, and the rights of reproductive freedom on the other hand.

Chairman ISSA. Yeah, but I was—

Mr. GARVEY. Let me emphasize that our objection—we are not here objecting to the fact that—I mean, women who attend Catholic University are still free and able to purchase contraceptives and these other services. The fight is about whether we should have to pay for it.

Chairman ISSA. Well, exactly, but you already pay for it through your taxes. We all pay for it through out taxes if government gives it away. The fact is that government is already doing something that this rule is telling you to do, even though it is objectionable to your basic tenets of faith; is that right?

Mr. GARVEY. I think so.

Chairman ISSA. Thank you.

Anyone else have questions for our first witness? He is going to remain as long as he can.

Go ahead, Mr. Cummings.

Mr. CUMMINGS. Just one question. President Garvey, is your objective to the payment, or the fact that an employee or students are receiving these services at all, or both?

Mr. GARVEY. We are here today because we object to the second, not the first. There are other ways of solving this problem, and we might very well object to them. For example, here is—here is a solution that doesn't interfere with our religious liberty. The government itself could provide these services to young people and to employees at no cost to either us, or the employees, or our insurer. We would object to that as well, because we believe as a Catholic university that it is part of our concern to attend to the moral for-

mation of our students, but that's not an objection about our religious liberty.

Mr. CUMMINGS. Okay. All right.

I just wanted to enter into the record, Mr. Chairman, a list of Catholic schools in 20 different States that currently offer some form of health care insurance for contraceptives.

Chairman ISSA. Without objection.

[The information referred to follows:]



### Sampling of Catholic Institutions that Provide Contraceptive Coverage\*

State	Institution	Type	Policy
CA*	Daughters of Charity	Hospital Chain, employs ~ 9,000	Covers contraception
CA*	Santa Clara University	University Employees	Covers tubal ligation, vasectomy
CA*	Jesuit School of Theology	University Employees	Part of Santa Clara University - covers tubal ligation, vasectomy
CA*	University of San Diego	University Employees	"Birth control methods 100% Covered. No Copayment". (SIMNSA Medical Benefit Summary). University of San Diego also offers its employees another health insurance policy that provides unrestricted coverage of oral contraceptives, but covers other forms of contraceptives only if medically necessary. (Anthem Blue Cross PLUS Plan, 1/1/2010)
CA*	University of San Francisco	University Employees	The plan covers prescription oral contraceptives and contraceptive diaphragms without exception (although limiting the number of diaphragms), but only covers "injectable drugs and implants for birth control... IUDs and diaphragms dispensed by a physician" if "medically necessary." (Prudent Buyer Plan Benefit Booklet, dated 10/1/2009)
CA*, NV, AZ*	Catholic Healthcare West	Hospital Chain, employs around 55,000	NPR article that reported that Catholic Healthcare West provided coverage even before required to by state law. <a href="http://www.npr.org/blogs/health/2011/12/02/143022996/catholic-groups-fight-contraceptive-rule-but-many-already-offer-coverage">http://www.npr.org/blogs/health/2011/12/02/143022996/catholic-groups-fight-contraceptive-rule-but-many-already-offer-coverage</a>

\*Policies summarized in this chart are based on documents available to the NWLC and are not necessarily definitive of the institution's policy.

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\*Indicates state law already requires contraceptive coverage.

State	Institution	Type	Policy
CT*	Sacred Heart University	University Employees	"Covered expenses include charges for certain contraceptive and family planning services, even though not provided to treat an illness or injury. Refer to the <i>Schedule of Benefits</i> for any frequency limits that apply to these services, if not specified below... Covered expenses include charges for contraceptive services and supplies provided on an outpatient basis, including: Contraceptive drugs and contraceptive devices prescribed by a physician provided they have been approved by the Federal Drug Administration; Related outpatient services such as: consultations, exams, procedures, and other medical services and supplies... Covered expenses include charges for family planning services, including voluntary sterilization."
DC	Georgetown University	University Employees	"Plan Includes:...Contraceptive drugs and devices obtainable from a pharmacy". (Aetna Plan, Effective Date 1/1/2012). Georgetown offers three other medical insurance plans to its employees. One of the three other plans explicitly mentions contraceptives by excluding coverage "of oral contraceptives for birth control." It is possible that this plan covers oral contraceptives if prescribed for other reasons besides birth control. (Choice Plus, Plan 012M, Effective 1/1/2012).
IL*	Dominican University	University Employees	Pharmacy benefit description: "Contraceptives- Available at retail and mail service at the appropriate copayment level based on drug classification."
IL*	Loyola University of Chicago	University Employees	Employees can use their Flexible Spending Account to pay for "birth control items."
IN	University of Notre Dame	University Employees	Covers oral contraceptives if for the "correction of existing pathologies of the reproductive system" (with letter from physician establishing medical necessity), but otherwise excludes coverage for oral contraceptives and contraceptive devices unless "specifically requested by a physician based on medical necessity and for purposes other than contraception." (Plan Summary 2010).
LA	Loyola University of New Orleans	University Employees	Prescription drug benefits specifically include oral contraceptives; 2012 benefits expanded to include intrauterine contraceptive devices. (Benefits Enrollment Guide)

\* Indicates state law already requires contraceptive coverage.

State	Institution	Type	Policy
MA*, NH*, RI*	Steward Healthcare System (formerly known as Caritas Christi)	Hospital Chain (MA); Managed Care (NH, RI); employs around 14,000	Prior to its purchase by a private equity firm and being renamed Steward Healthcare System, Caritas Christi was a Catholic hospital chain that provided contraceptive coverage. Our understanding is that when a Catholic hospital is sold to a non-Catholic entity, the church directives stay with the hospital chain even after being sold. This information is supported by Boston Globe reporting: "All six Caritas hospitals, including the flagship St. Elizabeth's Medical Center in Brighton, will remain open and follow the Catholic Church's ethical and religious directives, among them a ban on abortions." Robert Weisman, "Equity firm set to buy Caritas", Boston Globe, Mar. 25, 2010, available at: <a href="http://www.boston.com/business/healthcare/articles/2010/03/25/equity_firm_set_to_buy_caritas/">http://www.boston.com/business/healthcare/articles/2010/03/25/equity_firm_set_to_buy_caritas/</a>
MD*	Loyola University Maryland	University Employees	Contraception is covered when used for purposes other than birth control. Exclusions: "Contraceptive devices and drugs...unless otherwise stated." Prescription drug benefit: "Medically Necessary contraceptive devices and contraceptive drugs."
MI*	University of Detroit Mercy	University Employees	Has contraceptive coverage riders allowing enrollees to purchase coverage.
NY*	Saint John's University	University Employees	Covered Services include "Family planning services which consist of counseling on use of contraceptives and related topics. The costs related to the measuring and fitting of a contraceptive device are also covered if the service is performed during the annual well-woman examination. These services will be provided by your selected Primary Provider of OB/GYN Care without a referral from your PCP. We also Cover vasectomies and tubal ligations." Exclusions and limitations include: "Birth control pills, implantable contraceptive drugs, condoms, foams or devices, IUDs, diaphragms, contraceptive jellies and ointments, even if they are being prescribed or recommended for a medical condition other than birth control." (Employee Benefits Summary Descriptions, Certificate of Coverage)
NY*	Various Catholic employers		We have information that various Catholic employers in New York are covered by a multi-employer contract which includes a health fund covering contraception through the League for Voluntary Hospitals.

\* Indicates state law already requires contraceptive coverage.

State	Institution	Type	Policy
OH	University of Dayton	University Employees	"Covered services may include, but are not limited to... Contraceptive devices including diaphragms, intra uterine devices (IUDs), and implants...Covered Prescription Drug Benefits:...Oral contraceptive drugs are covered when obtained through an eligible pharmacy." (Core Plan PPO & Advantage Plan PPO, Effective Date 1/1/2011)
OH	Franciscan University of Steubenville	University Employees	Under the prescription benefits, the policy excludes coverage of contraceptives "except when prescribed for purposes other than birth control." The same policy elsewhere excludes "contraceptive services, including contraceptive prescription drugs, contraceptive devices, implants and injections, and all related services"; thus, the policy appears to always exclude coverage of contraceptive services and devices, but cover prescription contraceptives when "prescribed for purposes other than birth control." (BCBS PPO Program, Effective 1/1/2011)
OH	John Carroll University	University Employees	Offers two insurance policies that exclude contraceptive coverage "except as specified." No exception is provided, but the policies define contraceptives as "oral, injectable, implantable or transdermal patches for birth control." It is possible that by defining contraceptives as used for birth control, the policies are carving out an exception to the exclusion similar to the Franciscan University of Steubenville policy, where if a contraceptive is used for purposes other than birth control, then the contraceptive will be covered. (Supermed Plus HDHP-Active-Single, Effective date 9/23/2010; Supermed Plus, RX-Plan C-Active, Effective date 9/23/2010).
PA	King's College	University Employees	Excludes coverage of prescription contraceptives when "being used for the prevention of pregnancy including injectable contraceptives, except when used for an approved medical condition" (Bluecare PPO 250, dated 7/1/2006 and Bluecare PPO 500, dated 7/1/2006)

\* Indicates state law already requires contraceptive coverage

State	Institution	Type	Policy
PA	University of Scranton	University Employees	Policy has several provisions on contraceptive coverage. 1) Covers "therapeutic drugs, medications and injectable ... being rendered by the Primary Care Physician during an office visit, and when Medically Necessary", but limits that coverage by excluding coverage of "contraceptives, when used for the purpose of birth control." 2) Covers prescription drugs and medications, including contraceptives, "are covered when prescribed by a licensed physician when Medically Necessary", including contraceptives if requiring birth control is medically necessary. 3) Otherwise, "drugs, medications and injectable including ... contraceptives when used for the purpose of birth control, [are excluded] except as provided [in the prior section]." (First Priority Health Plus, Member Handbook, Effective date 2/1/1999)
TX	University of Dallas	University Employees	The policy provides that "birth control pills and devices are covered if medically necessary with a medical necessity letter from your physician annually." (PPO Plan Option, Effective 1/1/2011) Although this allows for restricted coverage of "pills and devices," the Policy elsewhere excludes "implantable contraceptive products."
TX	St. Edwards University	University Employees	"Coverage includes contraceptive drugs and devices available at pharmacy." (2012 Employee Benefits Guide). Note, this information came from the employee benefits guide, it is possible that the actual policy documents contain limitations on this coverage of contraceptives. We were unable to locate the policy documents.
TX	University of Incarnate World	University Employees	"Your coverage includes the following...Contraceptives." (HumanaPOS Rx3 Prescription Drug Coverage; see also Humana/HMO Rx3 (same)). Note: this information is from a condensed version of the prescription drug benefits for employees under the PPO or HMO plan. It is possible that the actual policy documents include limitations of this contraceptive coverage (although no specific limitation is in the "limitations and exclusions" section of the condensed version, where other prescriptive medicines, for example, for "impotence and/or sexual dysfunction" and "abortifacients" are specifically excluded)
VT*	Saint Michael's College	University Employees	Policy only excludes "implantable contraceptive products" with no other mention of contraception.

\* Indicates state law already requires contraceptive coverage.

State	Institution	Type	Policy
WA*	Gonzaga University	University Employees	Self-funded plan "Exclusions...Contraceptive drugs or devices, prescription oral contraceptives, diaphragms, and cervical caps, unless medically necessary." (Your Choice Heritage Plus 1, 6/1/10)
WA*	Seattle University	University Employees	"Allowances Schedule": "Drugs -- Outpatient (including ... contraceptive drugs and devices)". (2011 Group Health Benefit Booklet 2011). Provides medical coverage for "certain professional Provider contraceptive services and supplies, including but not limited to... IUD or Norplant" and prescription coverage for self-administered contraceptives. (Seattle University, 2011 Regence BlueShield Summary Plan, Effective Date 1/1/2011)
WI*	Marquette University	University Employees	"This Plan provides benefits for Prescription contraceptives, regardless of purpose." The plan later excludes "non-systemic contraceptives or devices" if not otherwise allowed in the coverage described above. (Health Benefit Summary Plan Description, Revised 1/1/2010).
WI*	Viterbo University	University Employees	This plan only excludes non oral contraceptives and emergency contraception. But oral contraceptives are not listed under exclusions. Exclusions: "Non oral systemic contraceptives (ex. NuvaRing & patches), Depo-provera, implants, condoms, diaphragms & spermicides;" "Emergency contraceptives or other Drugs related to the termination of pregnancy (including but not limited to Mifeprex, Preven and Plan B)."

\* Indicates state law already requires contraceptive coverage.

Chairman ISSA. Mr. Quigley. You had a quick question.

Mr. QUIGLEY. Sure. In the previous panel, Doctor, the question was, there is also legislation that we are discussing that would take this exemption to all private-sector employees as well. Would you—do you support that? I mean, do you believe that the private—if an employer of a large corporation, the owner of a large corporation or a small one, has the same moral objections that you do, do you think that we should be able to force them to provide contraception?

Mr. GARVEY. First of all, Congressman, I appreciate the promotion. I'm not a real doctor. I'm a lawyer.

Mr. QUIGLEY. I'm sorry. I can't—I can't see the signs from here. I apologize.

Mr. GARVEY. Would I take the same position with respect to private institutions' or private employers' religious objections? Yes, I would. That would leave us in no worse position than we are before the passage of the regulation, and I think that private individuals and not just churches and religious institutions have rights of religious freedom.

Mr. QUIGLEY. So, the question comes, how far do you take that? To those other people's—we represent people of all faiths. Many disagree with this, and they believe that contraception is perfectly okay. At what point do you lose control over them that—you know, besides perhaps an assistant professor's wife that is employed? What part of the bargain is there for all manners of university toward this end? Never mind—never mind in the private sector. How far do you go with your beliefs influencing millions of other women?

Mr. GARVEY. That is a—that's a really important question, Congressman. And let me suggest that this body has provided the perfect answer to that question. When you passed the Religious Freedom Restoration Act, you said that rights to religious freedom should not be infeasible; that there are some occasions when they have to yield. But what the government has to show in order to defeat a claim of religious liberty is that the government has a compelling interest in doing what it's doing, and that they are employing the least restrictive alternative to interfere with the religious freedom. And the Religious Freedom Restoration Act that I'm referring to applies to private employers no less than religious institutions.

Mr. QUIGLEY. But in the end someone has to make that choice.

Mr. GARVEY. Yes, they do. Congress has made that choice for us.

Mr. QUIGLEY. And I understand, but we make these choices all the time, and some of them are difficult. I mean, some of them are obvious. I have the example of this Louisiana justice who refused to marry interracial couples because, as he said, I found out I can't be a justice of the peace and have a conscience. That was his belief, his heartfelt religious belief, however horribly misguided.

We said today a minority even of one matters, and we can't trample their religious beliefs, you know. Where do we draw the line with someone like this? Where do we draw the line with others whose faith is just as important to them, Christian Scientists and others who don't believe—and other groups that don't believe in transfusions, you know? If they have a health care clinic, or a hos-

pital, or other faith—it just seems so out of sync for us to imagine that that would be okay. But if you follow the same stream of thought, there is really not that much difference from what you are professing today; projecting your faith, which I deeply appreciate and respect, on others, millions of women who have some right to make those choices that don't actually work in the church.

Mr. GARVEY. Let me just say one more time, Congressman, that we are not trying to impose our beliefs on our employees or our students. The question that we are discussing is whether the university should have to pay for activities that it views as immoral.

Chairman ISSA. Thank you. And it is going to be a full 5 minutes for Members later.

Do you have something briefly? Please, go ahead. The gentleman is recognized.

Mr. MCHENRY. I, like the chairman, I actually have just a couple of briefs questions.

Mr. Garvey, what's the name of the institution where you serve as president?

Mr. GARVEY. The Catholic University of America.

Mr. MCHENRY. And what church are you affiliated with?

Mr. GARVEY. The Catholic Church.

Mr. MCHENRY. Okay. And when employees seek employment from your institution, are they aware that you are affiliated with the Catholic Church?

Mr. GARVEY. Yes, they are. As part of the—as part of the hiring process in the first place, before somebody is hired, we have a discussion about the mission of the university. As part of the intake of new employees in the human resources department, we give them a statement of the university's mission, and they need to check off that they have—that they have received it and actually support the mission of the university.

Mr. MCHENRY. And you adhere to the tenets of the Catholic Church?

Mr. GARVEY. Yes.

Mr. MCHENRY. Okay. So my point here, Mr. Chairman, is a very simple one; that individuals seeking employment from the Catholic University of America go in understanding the tenets of the church, and, therefore, the adherence that the institution must, you know, follow, and the tenets the institution must follow, and so if they don't like that, if they choose to go somewhere else regardless of their faith, they have that free will to do that.

And so with that, I yield back.

Chairman ISSA. I think the gentleman—I would gather that the rules of the Catholic Church are not new or unknown to others, and I think you said that very well.

With that, we will continue on with our witnesses.

Doctor.

#### **STATEMENT OF WILLIAM K. THIERFELDER**

Mr. THIERFELDER. Yes. Members of the committee—

Chairman ISSA. Did you get the mic?

Mr. THIERFELDER. Thank you. Sorry about that.

Chairman Issa, Ranking Member Cummings, members of the committee, my name is Dr. Bill Thierfelder. I am the president of

Belmont Abbey College, and I greatly appreciate you taking the time to listen to my really grave concerns about this health thing and service mandate.

Maybe to better understand who we are and why this issue of religious liberty is so important to us, let me just begin with the first sentence of our vision statement, which says: Belmont Abbey College finds its center in Jesus Christ. Our mission is to educate students in the liberal arts and sciences so that in all things God may be glorified. In this endeavor we are guided by the Catholic intellectual tradition and the Benedictine spirit of prayer and learning. Emphasizing Benedictine hospitality, we welcome a diverse body of students, and we provide them with an education that will enable them to lead lives of integrity, to succeed professionally, to become responsible citizens, and to be a blessing to themselves and others.

Our Benedictine tradition, which is guided by the rule of St. Benedict, which is really a scripturally based guide for how to live in community with one another, chapter 53 of that guide is on the welcoming of guests. We welcome each guest in persona Christi, as Christ, and we do that regardless of someone's faith or background. We say, come on in. We love you. That's who we are.

If you have never seen our campus, I, first of all, would invite you all to come. And I would love to have you over, and have a cup of coffee, and get to know you better. But if you have been to our campus, it's beautiful. You will see the red brick, Gothic-structured buildings that are there. And when those monks first arrived there almost 136 years ago, there was nothing on that property but two shacks with holes in the roofs. Those monks literally dug up the red clay, formed them into bricks, dried them in the sun, and placed those bricks there over 130 years ago. So this integration of our faith and the mission of the college, is even more visible when you just see the buildings, the layout of the campus itself.

When you drive up the main drive, we have a basilica, which is our church. By the way, some of that funding came from St. Katharine Drexel. That church is actually connected to the monastery where we have the monks that live at Belmont Abbey. Connected to the monastery is actually the main administration building where my office is. So to demonstrate here that our integration, the sense of who we are as Catholic, and our mission as a college can't be separated. It's essential to who we are.

And now our struggle for religious liberty really began in earnest about 4 years ago when we were investigated for discrimination by the EEOC because we did not provide abortion, voluntary sterilization and contraceptives in our health care plan. When the mandate was announced, we had a heightened sensitivity to this issue because we viewed it as really another tactic, in this case maybe an extreme tactic, to coerce us into providing services that we find morally objectionable.

Abbot Placid Solari is the head of the monastic community. He is also the chancellor of Belmont Abbey College. He and I meet regularly. We speak all the time about matters of the college, and so when this came up, we obviously discussed the mandate when it first came out in August. And really at his urging and leadership we both agreed that the best course was to take a defensive action

by filing a lawsuit against the Federal Government, which was no, you know, small thing for a little place like Belmont Abbey College to do, but we thought that was what we needed to do at that time based on our experience.

We presented the idea to the board of trustees, who unanimously approved the action, and with the help of the Becket Fund for Religious Liberty, we filed a lawsuit against the Department of Health and Human Services. The response of Kathleen Sebelius was somewhat bewildering to us. We could not figure out what a year extension had to do with the issue that we were faced with. Basically no amount of time would make the morally objectionable mandate somehow acceptable to us.

Then, most recently, the President held a press conversation to offer what I believe was a fatally flawed compromise. The reason I say this is that the President does not have the right or the authority to take away someone's religious freedom. And therefore, when talking about or offering a compromise, I don't understand how he can give back something that he had no right to take in the first place.

So in this particular case, we specifically do object to being coerced into providing contraception, sterilization, and abortion-inducing drugs into our health care plan. But make no mistake, as important as those are to us, the underlying principle here is about our religious liberty. I believe you will discover that there are tens of millions, if not more, of Americans of all backgrounds and all faiths who are thinking just like we are, and I believe that they will not budge an inch on this issue.

I think there can be no compromise when it comes to our right to religious freedom and right to conscience, and so I'm here today to ask for your help. This is an issue worth dying for, and many have. Many have made the ultimate sacrifice in order to preserve this right. So please ensure that every American's right of conscience and religious freedom is fully protected.

Thank you for considering my plea, and God bless you and all of your good work.

Chairman ISSA. Thank you.

[The prepared statement of Mr. Thierfelder follows:]

**Testimony of Dr. William K. Thierfelder, President  
Belmont Abbey College  
Before the  
Committee on Oversight and Government Reform  
Of the  
United States House of Representatives  
“Lines Crossed: Separation of Church and State. Has the Obama Administration  
Trampled on Freedom of Religion and Freedom of Conscience?”**

Thank you, Mr. Chairman, for holding this very important hearing into an issue which has become front and center for this country in the past several months, and which is ignored at the peril of our religious freedom. I would also like to thank the Becket Fund for Religious Liberty, which represents my institution, Belmont Abbey College, in its fight against the Obama’s Administration’s very dangerous mandate.

When the mandate was issued in August 2011, we were stunned. Belmont Abbey College, which was founded in 1876 by Benedictine Monks, is affiliated with the Roman Catholic Church and the Order of St. Benedict. We are unwavering in our belief that contraception, sterilization, and abortion are against God’s law. This is what we teach our students. We believe it is a sin for us to facilitate access to these services through the funds of our religious college. Providing contraceptive services, abortifacients, and sterilization – and the education and counseling that go along with such services mandated by the government – is a violation of our conscience. This is a violation that we refuse to make. And yet, that is precisely what we will be forced to do under the Health and Human Services mandate. That is why, Belmont Abbey College, with the help of The Becket Fund for Religious Liberty, filed the first lawsuit against the government to challenge this violation of our freedom of religion.

Many have noted that this mandate fits into a pattern of actions this Administration has taken that show hostility toward religious liberty. We at Belmont Abbey College know this story first hand. Three years ago, in the early months of this Administration, the Equal Employment and Opportunity Commission (EEOC) made Belmont Abbey College the first religious organization ever targeted by the federal government for not covering contraception in our employee health care plan. The EEOC said that by remaining true to our Catholic beliefs we were guilty of “gender discrimination.” They then sat on their hands and refused to issue a final determination on our case. They have left us in limbo, with an EEOC investigation hanging over our heads, for more than two and a half years.

Why has the EEOC refused to move forward in our case, we’ve wondered? No doubt it’s because they knew their aggressive interpretation of Title VII would not hold up in court. In fact, the only federal appeals court to hear this issue held that the EEOC was wrong—Title VII does not require employers to cover contraceptives (In re: Union Pacific Railroad Employment Practices Litigation, 479 F.3d 936 (8<sup>th</sup> Cir. 2007)). And that is even before you get to the constitutional alarms that go off when the government tries to punish religious groups for following their convictions.

So because this Administration realized it couldn't force a Catholic College to distribute contraception through the courts, and of course any such mandate wouldn't pass through Congress, the Obama Administration is now trying to coerce us through an administrative rule. While the Administration's tactics have changed, our convictions have not – and as much as they'd like us to “adapt” them in the next year, they will remain firm.

With the help of The Becket Fund, Belmont Abbey College is fighting the HHS mandate in federal court. Our lawsuit sets forth not one, but multiple, claims to show how this mandate violates our rights under the Constitution and federal law.

For instance, we have challenged the mandate under the free exercise clause of the First Amendment because it pressures Belmont Abbey College to violate its religious beliefs by forcing it to choose either to follow its conscience or suffer substantial fines and competitive disadvantages in the employment market.

We have also challenged the mandate under the free speech clause of the First Amendment because it compels Belmont Abbey College to subsidize drugs and procedures that it teaches are immoral, and furthermore compels us to provide our employees with education and counseling on how to violate Church teaching.

We also have a substantial burden claim under the Religious Freedom Restoration Act because of the substantial burden it places on us if we are forced to pay an annual fine for all of our employees for not buying health insurance that violates our conscience. These fines could be \$300,000 annually.

The administration offered what it seemed to think was a nice gesture on January 20<sup>th</sup>, when it gave those religious organizations that do not qualify for the exemption an extra year to comply. An extra year to learn how to violate our conscience and betray our deepest religious principles. I've explained this as akin to being told, “We know you use oxygen to breathe, so we're going to give you an extra year to figure out how to breathe without it, and we hope by then you've adapted.” Our religious beliefs and principles – and our freedom to express them without government interference – are as important to us as the air we breathe. They are not something we are prepared to abandon in a year's time because the government says we have to.

We have been asked about the impact on our case of President Obama's announcement of a “compromise” on Friday, February 10<sup>th</sup>. The answer is that it has no impact whatsoever on our lawsuit, because the compromise did not in fact make any change to the mandate issued in August.

First, nothing in this accommodation offered by the President clarifies or expands the group of religious organizations which qualify for the exemption from the mandate. With the original mandate in August 2011, President Obama created two tiers of religious groups. The first tier, the organizations that qualify for this exemption, are religious groups who primarily serve and employ members of their own faith. On the second tier are organizations that serve the broader community by providing social services, education, and employment to people from outside their direct faith group. These organizations – including Belmont Abbey College – do not qualify for

the religious exemption. We are punished for providing services for people of other faiths by being forced to violate our conscience.

And I won't even get into the impact on all of those individuals who self-insure, run small businesses, and who object to this intrusion on their conscience and aren't even considered by this Administration as "religious enough" to have their religious beliefs protected.

The attempt by the current Administration to narrow the definition of what constitutes a religious group is part of a larger trend of erosion of religious freedom in this country. This was seen most strikingly in the Hosanna-Tabor case, also argued by the Becket Fund, in which the Supreme Court of the United States unanimously rejected the administration's extremely narrow interpretation of religious freedom. It is also seen in the willingness of the administration to enforce this mandate, even if it were to result in the forced closure of religious charities that provide essential services to the needy.

Second, the announcement last week was merely an accounting gimmick and changes nothing in the mandate. Supposedly, instead of religious organizations paying for the contraceptive services, now the President intends to pass this on to the insurance company who will pay for them. But, of course, we're the ones paying the insurance company. So, if he somehow gets this through some rule-making procedure, he's essentially opened a whole new can of worms related to the rights of those insurance companies and our continued objection to providing insurance that covers these objectionable things.

The core issue of the mandate remains: religious groups are still forced to purchase a product that provides contraceptive services. Religious groups are still not allowed the option to provide health care that is consistent with our religious beliefs. And we will still have to pay a substantial fine if we don't do this, in violation of our conscience. It's a no win situation.

I joined a group of over 300 renowned academics, university professors, presidents, deans, and board members, journalists, and lawyers who signed our names to a letter denouncing the HHS mandate and the President's unacceptable "accommodation" as announced on Friday. The signators of this letter include Christians of all denominations, Jews, and Muslims, who have come together to protest the administration's grave violation of religious freedom. This is an issue which does not simply affect the "Catholic bishops," as the media seems to portray. Any time the government so blatantly disregards the constitutional rights of the people, it affects all Americans who value the First Amendment and the right to freely practice our religion without interference by the government.

It should be telling that so many people, from so many political and religious groups, have spoken out about this egregious violation of the freedom of conscience. It should indicate to the administration that it is unacceptable to give people of faith a false choice – either abide by the government's rules, or abide by your own rules and suffer the very substantial consequences.

Our nation's founders believed strongly in the important place of religious institutions in American society and the need for those institutions to remain independent of governmental control. Religious freedom was enshrined in the First Amendment, guaranteeing the right for

freedom of belief and freedom of exercise. But now, religious institutions are being pushed out of the public sphere, our practices increasingly regulated by government policies. The right of individuals and groups to hold certain religious beliefs and live our lives according to those beliefs is being eroded. Belmont Abbey College and the Becket Fund are not simply fighting a contraception mandate; we are fighting to maintain our inalienable right to freedom of religion, the first freedom. When we lose the freedom to believe, we have lost all freedom.

Thank you.

Chairman ISSA. Dr. Oliver.

**STATEMENT OF SAMUEL W. "DUB" OLIVER**

Mr. OLIVER. Good afternoon, Chairman Issa, and Ranking Member Cummings. I appreciate your invitation to share my concerns about the serious threat to our religious liberty. My name the Dub Oliver, and I serve as the president of East Texas Baptist University, a Christ-centered university founded in 1912.

I would like to raise four main points during my testimony today. First, East Texas Baptist University has a religious objection to this mandate, and this mandate violates our constitutional rights. Baptists in America, by virtue of our history, are particularly sensitive to coercive government actions that infringe upon our religious liberty. America's first Baptist leader Roger Williams had to flee Massachusetts and found a colony in Providence, RI, because his religious beliefs were not tolerated.

But it is not just about us. Baptists are alarmed whenever any religious group's rights are threatened. As the famous Baptist preacher George W. Truett once said: "A Baptist would rise at midnight to plead for absolute religious liberty for his Catholic neighbor, for his Jewish neighbor, and for everybody else."

I would be testifying here even if this mandate only affected my Catholic neighbors, but I must point out that this is not just a Catholic issue. While many Christians do not share the Catholic beliefs against contraception, there is wide agreement that abortion is wrong. And we believe, based on the Bible, that life begins at conception. The administration's mandate covers emergency contraceptives such as Plan B, and Ella, which even this administration admits interfere with the human embryo. Our faith and the most recent science tells us that these drugs cause abortions, but under the administration's mandate, my university will be required to buy insurance so that our employees can obtain these drugs for free, as if there is no difference from these drugs and penicillin. We believe that is wrong.

Second, we are offended that this administration says that we aren't religious enough to have our religious beliefs respected. Last Friday the administration gave final approval to a rule that includes the narrowest definition of a religious organization ever to appear in Federal law. ETBU does not qualify because we teach and serve non-Christians. We accept students of all faiths and students of no faith. The President has now promised that he will someday propose another regulation that will protect groups that the government says aren't religious enough for an exemption, but are religious enough for some accommodations.

Why is the government creating different classes of religious groups and assigning each group different rights? That is not the government's job. The First Amendment is designed precisely to stop the government from this sort of picking and choosing.

Third, this is not about women's health; this is about whether the government can get away with the trampling on the rights of religious organizations. It is ridiculous to claim that organizations like mine don't care about women's health. As far as I'm aware, no religious group objects to most of the preventative services in the mandate. In fact, we already cover preventative services, including

contraceptives, under our employee health plan. We simply object to a few drugs which the government calls contraceptives because we believe they cause abortion.

Additionally, I have heard it suggested that this mandate is necessary to increase access to contraception. The President said last Friday that close to 99 percent of women use contraception. I don't know if that number is true, but surely if the President is quoting this number, he knows there is no problem with access.

The issue is not about women's health, it's about religious liberty. It is about whether government will force religious people and organizations to do something they believe is wrong. Everyone here wants women to have access to quality health care. What we are asking is that our religious views be respected.

To close, perhaps the most frightening aspect of this entire episode for ETBU is that we have no idea where this road will end. Today the administration is trying to force us to provide our employees with abortion-causing drugs. What's next? If the government can force Catholic monks to dispense birth control, what can't the government do? If the government can decide that ETBU is not religious enough to have the right to religious liberty, what can't the government do? If this administration can just decide that religious beliefs are less important than its chosen policy goals, what can't it do?

These questions are alarming, and that is why people all across the spectrum are joining together out of concern that this mandate threatens to erode one of our most precious rights, our religious liberty, guaranteed to us by the First Amendment. I urge this committee and Congress to ensure religious liberty for those of us at East Texas Baptist University and for all Americans.

Chairman ISSA. I thank you.

[The prepared statement of Mr. Oliver follows:]

**“Lines Crossed: Separation of Church and State. Has the Obama Administration  
Trampled on Freedom of Religion and Freedom of Conscience?”**

**Testimony of Dr. Samuel W. “Dub” Oliver**

**President, East Texas Baptist University, Marshall, Texas**

**Before the**

**Committee on Oversight & Government Reform**

**U.S. House of Representatives**

**February 16, 2011**

**Introduction**

Good morning Chairman Issa and Ranking Member Cummings:

I appreciate your invitation to share my concerns about this serious threat to religious liberty. My name is Dub Oliver and I serve as the President of East Texas Baptist University in Marshall, Texas.

East Texas Baptist University is a Christ-centered university that was founded in 1912.

During the fall of 2011, our student body included 1,214 students.

Additionally, we have 225 full-time faculty and staff members.

I would like to raise four main points in my testimony this morning.

**1. East Texas Baptist University has a religious objection to this mandate, and this  
mandate violates our constitutional rights.**

The overwhelming coverage of this issue has been focused on the Catholic concern with the HHS mandate. But I would like to begin by talking about why this issue is so important to us as a Baptist school.

Baptists in America, by virtue of our history, are particularly sensitive to coercive government actions that infringe on religious liberty. America’s first Baptist leader, Roger Williams, had to flee Massachusetts and found a colony in Providence, Rhode Island, because his religious beliefs were not tolerated by the laws of Massachusetts. As a religious dissenter, he was run out of the state.

Because we know what it is to have our own religious liberties infringed, we are alarmed whenever any religious group’s rights are threatened. As the famous Baptist preacher, George W.

Truett once said, "A Baptist would rise at midnight to plead for absolute religious liberty for his Catholic neighbor, and for his Jewish neighbor, and for everybody else."

We are united with Catholics and people of all faiths regarding the fact that no religious group should be forced by the government to do things that they believe and teach are wrong.

We believe that the Federal government is obligated by the First Amendment to accommodate the religious convictions of faith-based organizations of all kinds, Catholic and non-Catholic.

As a Baptist, I would be standing here even if this mandate only affected my Catholics neighbors. But I must point out that this is not just a Catholic issue. While many Christians do not share the Catholic beliefs against contraception, there is wide agreement that abortion is wrong. And we believe, based on the Bible, that life begins at conception. The Administration's mandate covers emergency contraceptives such as Plan B (the morning after pill) and *ella* (the week after pill), which even the Administration admits interfere with a human embryo.

Our faith and the most recent science tells us that these drugs cause abortions. But under the Administration's mandate, East Texas Baptist University will be required to buy insurance so that our employees can get abortion causing drugs for free, as if they are no different than penicillin. We believe that is wrong.

Therefore, East Texas Baptist University, like many Christian educational and social service institutions will soon face the choice of (1) paying for drugs we consider immoral on religious grounds or (2) terminating our employee health insurance plan and paying a significant per-employee fine. This sort of government coercion is wrong, and it is unconstitutional.

East Texas Baptist University and those with whom we have been associated have been addressing this issue since the final rule was first released in August 2011. We have submitted comments on the rule to HHS, we have written letters to President Obama asking his administration to respect the religious liberty guaranteed in the Constitution, and we have advocated with lawmakers to protect our liberty.

**2. We are offended that this Administration says that we aren't "religious enough" to have our religious beliefs respected.**

Last Friday, the Administration gave final approval to a rule that includes the stingiest definition of a religious organization ever to appear in federal law. Under this rule, the only groups "religious" enough to qualify for an exemption are those that exist only to spread religious values, and that hire and serve people only those that share their beliefs. Because East Texas Baptist University teaches and serves non-Christians (we accept students of all faiths and students of no faith), we do not qualify for the very narrow religious exemption offered by the Administration.

But now the President has now promised that he will someday propose another regulation that will protect groups that the government says aren't religious enough for an exemption, but still

religious enough for some accommodation. And religious business owners and religious individuals seeking insurance apparently have no free exercise rights at all.

It is unbelievable to me that the government has now created this three-tiered caste system of religious organizations. Who gave the government the authority to create different classes of religious groups and assign each of them different rights? That is not the government's job. The First Amendment is designed precisely to stop the government from this sort of picking and choosing.

As others have said, even if this promised accommodation ever comes to pass, it will do nothing to address our religious objections. The President claimed last Friday that religious liberty will be protected because the insurance companies will be required to provide the offending abortion causing drugs instead of the employers. This simply does not make sense. But even if this accommodation was meaningful for some, it does absolutely nothing for East Texas Baptist University. Like many faith-based organizations, we provide our employees with a self-funded insurance plan. In organizations like ours, the University would still be required to directly fund abortion causing drugs.

### **3. This issue is not about women's health.**

The central issue here is not women's health, and it certainly isn't access to contraception. This is about whether the government can get away with trampling on the rights of religious organizations.

Of course religious organizations like East Texas Baptist University care about women's health. First of all, as far as I am aware, no religious group has lodged any objection to the majority of the preventative services in the mandate. In fact, we already cover preventative services, including contraceptives, under our employee health plan. We simply object to a few drugs, which the government calls contraceptives, because we believe they cause abortions.

Second, I've heard it suggested that this mandate is necessary to increase access to contraception. The Administration last Friday said that close to 99% of women use contraception. I don't know if that number is true, but surely if the President is quoting this number he knows there's no problem accessing these drugs.

This issue is not about women's health, it is about religious liberty. It is about whether the government will force religious people and organizations to do something they believe is wrong. Everyone here wants women to have access to good health care. We are asking that our religious views be respected.

### **4. If the government is allowed to go down this road, where will it end?**

To close, perhaps the most frightening aspect of this entire episode for East Texas Baptist University is that we have no idea when this road will end. Today, the Administration is trying to force us to provide our employees with abortion causing drugs. And it tries to avoid the obvious constitutional problems with this mandate by deciding that we are somehow not religious enough

for protection. If the government can force Catholic monks to dispense birth control, what can't it do? If the government can decide that East Texas Baptist University is not religious enough to have the right to religious liberty, what can't it do? If this administration can just decide that religious beliefs are less important than its chosen policy goals, what can't it do?

These questions are frightening. And that is why religious organizations and people of will from all across the spectrum are joining together out of concern that this mandate threatens to erode one of our most precious rights, our religious liberty, guaranteed to us by the First Amendment. I urge this Committee and Congress to act to ensure that protection for those of us at East Texas Baptist University, and for all Americans.

Chairman ISSA. Dr. Garrett.

**STATEMENT OF ALLISON DABBS GARRETT**

Ms. GARRETT. Chairman Issa and members of the committee, my name is Allison Garrett, and I'm the senior vice president for academic affairs at Oklahoma Christian University. I'm here today because of my support for religious liberty. I believe in the rights of institutions like Oklahoma Christian to decline to include in their health care plan items or services that are contrary to their religious convictions.

Oklahoma Christian University is affiliated with the churches of Christ. As a university affiliated with this group of Protestant churches, we believe strongly in our right to practice our faith without interference from the government. While we believe that every person is to be in subjection to the governing authorities, we respectfully ask that you not force Oklahoma Christian to choose between following our sincerely held religious beliefs or violating Federal law.

We oppose the administration's employer mandate requiring that all health insurance plans cover abortion-causing drugs for four reasons. First, covering abortion-causing drugs is objectionable to many employers and plan participants. We have no concerns about allowing our plan to cover contraception. Rather, our concerns deal with the coverage of abortion-inducing drugs. The government should not force institutions like Oklahoma Christian to offer a health plan that covers abortifacients like Plan B and Ella. While our views differs from those of our Catholic friends regarding what our plans should cover, our views are exactly the same on whether the government should be able to require individuals or institutions to violate their religious beliefs. The answer to that is no.

Second, the exemption is too narrow. As drafted, the exemption applies only to churches, synagogues and mosques. It is clear that it would not apply to religious institutions like Oklahoma Christian University and hundreds of similar religious colleges, universities, and other organizations. The exemption requires that an organization have the inculcation of religious values as its purpose. We teach our students not just to be proficient as engineers, or historians, or writers, but to approach their disciplines from a Christian world view. This is one of the reasons that I chose to leave a corporate career to work in Christian higher education. We incorporate our faith in everything we do at Oklahoma Christian, from daily chapel, to prayer before intramural athletic events, to service activities around the world, yet the exemption does not apply to us.

The exemption's language is also too narrow because it applies only to the group health plan offered by religious institution to its employees. Universities typically offer a plan to students as well. The student plan is offered as a service to students who are no longer covered by their parents' health insurance plans.

Third, reasonable alternatives to the employer mandate exist. Nothing about the administration's rule takes away women's rights to obtain contraceptives or abortifacients. This debate is not about whether women have the right to obtain these drugs; rather, this debate is about whether those who believe that contraceptives or abortion-inducing drugs that violate their convictions must be paid

for by them. There is a vast difference between the right to make a purchase for oneself and requiring someone else to pay for it.

Fourth, the President's announcement does not present a workable solution. The assurance of the administration that it would work with religious organizations that sponsor self-funded plans in the coming days to reach a compromise is too little assurance on too great a matter. The President's announcement does nothing to alleviate the concerns of institutions sponsoring self-funded plans. In addition, the employer must still communicate with the insurance company regarding who is covered, applicable dates of coverage, and similar matters. In other words, the employer's involvement in arranging coverage of objectionable drugs is inescapable.

Forcing employers to cooperate in offering drugs or services that they believe are morally wrong leaves these employers in the same moral quagmire as the original regulations. We ask that the administration and the Congress overturn these regulations because they infringe on our religious liberty.

Thank you.

Chairman ISSA. Thank you.

[The prepared statement of Ms. Garrett follows:]

**“Lines Crossed: Separation of Church and State. Has the Obama Administration Trampled on Freedom of Religion and Freedom of Conscience?”**

**Testimony of  
Allison Dabbs Garrett  
Senior Vice President for Academic Affairs  
Oklahoma Christian University  
Oklahoma City, Oklahoma  
Before the  
Committee on Oversight and Government Reform  
United States  
House of Representatives  
February 16, 2012**

Chairman Issa, Ranking Member Cummings, and other members of the Committee, I am here today because of my strong support for religious liberty. My name is Allison Garrett. I believe in the right of institutions like Oklahoma Christian University to decline to include in their health care plan items or services that are contrary to their sincerely held religious convictions.

Oklahoma Christian University, which is located in Oklahoma City, is affiliated with the churches of Christ. As a university affiliated with this group of protestant churches, we believe strongly in our right to practice our faith without interference from the government. While we believe that “every person is to be in subjection to the governing authorities,” we respectfully ask that you not force institutions like Oklahoma Christian University to choose between following their religious beliefs or violating federal law.

We oppose the Obama Administration's employer mandate requiring that all health insurance plans cover abortifacient drugs for four reasons:

1. Requiring our plan to cover abortion-inducing drugs will place the University and plan participants in the position of subsidizing the purchase of drugs that they believe causes the destruction of a human life;
2. The exemption from the requirement that plans cover contraceptives and abortifacients is far too narrow and violates the First Amendment;
3. There are reasonable alternatives to the employer mandate; and
4. The President's announcement does not present a workable solution.

**Coverage of Abortion-Inducing Drugs Is Objectionable to Many Employers and Plan Participants**

First, coverage of abortion-inducing drugs is objectionable to many employers and plan participants. Our views differ from those representing Catholic institutions here today. We have no concerns about allowing our plan to cover contraception; rather, our concerns deal with the coverage of abortive agents.

The government should not force institutions like Oklahoma Christian University to offer a health plan that covers abortifacients like Plan B and ella.

Just as many pharmacists choose not to dispense abortion-causing drugs because to do so violates their core religious beliefs, we do not believe abortifacients should be covered in our University health plan. Requiring a religiously affiliated employer to fund abortifacients that are viewed by it and by many of its employees as the destruction of a human life violates our right to the free exercise of our religious beliefs.

While our views differ from those of our Catholic friends regarding what our plan should cover, our views are exactly the same on the issue of whether the government should be able to require individuals or institutions to violate their religious beliefs. The answer to that is a resounding no. This issue is not one about which only Catholic institutions feel strongly. Many protestant institutions share similar concerns.

#### **The Exemption Is Too Narrow**

Second, the exemption from the requirement that the plans cover contraceptives and abortifacients is too narrowly drafted. As drafted, the exemption seems to apply only to churches, synagogues and mosques. It is clear that it would not apply to religious institutions such as Oklahoma Christian University and hundreds of similarly situated religious colleges, universities, and other organizations.

The exemption requires that an organization have “the inculcation of religious values as its purpose.” While universities like Oklahoma Christian certainly have inculcation of religious values as a very important and central purpose, we are an institution of higher education rather than a church. Our mission is to “transform lives for faith, scholarship and service.” In our University, various academic disciplines are taught from a Christian worldview. This is one of the reasons I chose to work at a Christian university after a long career in the corporate world.

Every semester as our faculty members write their syllabi for classes, they think about important faith issues in every discipline. They ask questions like “how can this class help to build the students’ faith?” and “what do the Scriptures say about topics we will cover in this class?” We teach our students not just to be proficient as engineers, historians or writers, but to approach their disciplines from a Christian worldview. We incorporate our faith in everything we do at Oklahoma Christian, from daily chapel to prayer before intramural athletic events to service activities around the world. We teach our students to follow their conscience and we cannot do less as an educational institution.

And how religious must we be to claim the exemption? Will the federal government examine whether faith-based universities are religious enough? Is it enough that we have Bible classes? What if we were to no longer have daily chapel?

Which government agency would be tasked with making the determination of whether a particular institution is religious enough to claim the exemption? The Department of Health and Human Services would be ill-equipped to make the necessary review and determination on this important topic, yet this is exactly what the draft regulations do.

The exemption also requires that the institution hire and primarily serve those who share its religious tenets. While Oklahoma Christian hires almost exclusively from the churches of Christ, I am aware that many strong faith-based institutions of higher education do not hire solely from their faith tradition. A majority of our students are drawn from the churches of Christ, but many of our students come from a variety of faith traditions or no religious background at all. The decisions that faith-based universities

make on these issues of whom to hire and whom to serve reflect differing interpretations of the scripture, theological traditions and the missions of the schools.

The exemption's narrow wording causes concern because of the apparent requirement that the institution be organized for tax purposes as a "church, their integrated auxiliary, or conventions or associations of churches." There are many faith-based institutions that are not affiliated with a particular church. And churches of Christ, with which Oklahoma Christian University is affiliated, do not have any denominational structure. Each congregation is fully autonomous. It appears that Oklahoma Christian University would not fall within the narrow language of the exemption.

Finally, the exemption's language is too narrow because it appears to apply only to the group health plan offered by a religious institution to its employees. Universities typically offer a plan to students in addition to a plan for employees. The student plan is offered as a service for students who are no longer covered under their parents' health insurance plans.

The exemption, as now drafted, does not appear to exempt student plans offered at Christian universities like Oklahoma Christian. But students who choose to enroll at Oklahoma Christian also agree to abide by a student code of conduct that states that "all members of the university community are expected to avoid sexual relations outside of marriage." Any exemption for plans based on religious convictions must also address plans offered by institutions of higher education for their students. To draw an artificial distinction between the plan that an institution offers to its employees and one that it offers to its students would place institutions in the morally and logically inconsistent position of offering something they find morally objectionable to the very group that they are educating and training.

#### **Reasonable Alternatives Exist**

Third, reasonable alternatives to the employer mandate exist. Nothing about the Administration's rule takes away women's rights to obtain contraceptives and abortion-inducing drugs. This debate is not about whether women have the right to obtain these drugs. Rather, this debate is about whether those who believe that contraceptives or abortifacients violate their religious convictions must pay for them. There is a vast difference between the right to make a purchase for oneself and requiring someone else to pay for it.

Reasonable alternatives exist for those who do not share the religious concerns expressed here today. Women can choose to purchase abortion-causing drugs on their own, can work for employers that offer plans covering abortifacients, or can purchase additional private health insurance that provides such coverage. In many instances, this might be insurance through a spouse's employer.

Another alternative is to provide a credit to employees to purchase their own insurance. This would position the employee to purchase the insurance product that best fits the individual employee's wants and needs. To do this, individuals must be able to purchase their own insurance with pretax dollars, just as they can through their employers. And because many states require that contraceptives be included in plans, employees should be able to purchase plans across state lines, though that is not currently an option under the McCarran Ferguson Act.

Any of these options would avoid situations where those who have a religious objection to covering abortion-causing drugs are not forced to violate their religious convictions. Some have argued that it would, in fact, be less expensive for institutions to offer birth control and abortifacients than to exclude them. However, the exercise one's religious liberty does not depend on the price tag attached.

#### **The President's Announcement Does Not Present a Workable Solution**

Fourth, the President's announcement does not present a workable solution. The Administration has not yet proposed anything new. The summary of the final rules states: "These regulations finalize, without change, interim final regulations authorizing the exemption of group health plans and group health insurance coverage sponsored by certain religious employers. . . ." (emphasis added)

All the Administration has offered to do is to discuss the issue further. The Administration has said that insurance companies rather than the plan sponsors will offer the contraceptives and abortion-inducing drugs at no cost. This may provide palliative care for the conscience for a few, but it does not provide any assistance to those institutions with self-funded plans. The assurance of the Administration that it would work with religious organizations that sponsor self-funded plans in the coming days to reach a compromise is too little assurance on too great a matter. And this suggestion does nothing to alleviate the concerns of institutions sponsoring self-funded plans.

In making his announcement, the President said, "Let me repeat: These employers will not have to pay for or provide contraceptive services, but women who work at these institutions will have access to free contraceptive services just like other women." The President's announcement fails to recognize the realities of the insurance marketplace. The payment for the contraceptives must come from somewhere and it will not be from insurance companies' profit margins. Rather, plan sponsors and participants will end up footing the bill through higher overall rates. Whether paid directly or indirectly, the moral issue remains the same for plan sponsors and for many plan participants.

Finally, the proposed approach cannot work without a plan sponsor's involvement. Even if the employer does not directly fund a portion of the contraceptive or abortifacient cost, the employer must still communicate with the insurance company regarding who is covered, applicable dates of coverage and the like. In other words, the employer's involvement in arranging coverage of objectionable drugs is inescapable, compromise or not. Forcing employers to cooperate in offering drugs or services that the employer believes are morally objectionable leaves the employer in the same moral quagmire as the original regulations.

We ask that the Administration and the Congress overturn these regulations because they infringe on religious liberty.

Chairman ISSA. Dr. Champion.

**STATEMENT OF LAURA CHAMPION**

Dr. CHAMPION. Good afternoon, Chairman Issa and the other members of this committee. Thank you for the mic. I appreciate your invitation to share my concerns about the contraceptive mandate.

My name is Dr. Laura Champion, and I am the medical director and a practicing physician for health services at Calvin College, a private 4-year Christian college in Grand Rapids, Michigan. I graduated from the University of Washington School of Medicine in 1996, and I'm board certified in family medicine.

Today I want to share my concerns with you as a person who has the responsibility to negotiate providing student insurance coverage and caring for students clinically. We are an institution whose religious character and mission is central to everything we are and everything we do. In order to understand our religious objection, you need to understand that we take seriously our faith commitments, including our holistic student health services.

Since 1876, the Christian liberal arts college—this Christian liberal arts college in Michigan has built a sterling reputation for academic excellence, consistently ranked in the U.S. News and World Report as a top liberal arts college. It is one of only four colleges in the Nation to receive a Senator Paul Simon Award for Campus Internationalization.

Calvin is fortunate to have a fully staffed health services department to serve the medical needs of our student body. We require that each student have health insurance to attend our school. We offer an affordable option for those students who enroll underinsured.

Great care is taken in crafting a student health plan to ensure that it reflects the values and beliefs of Calvin College and the Christian Reform Church. This student health plan covers all preventative care at 100 percent, according to the medical definition of "preventative care." We do not cover Ella or Plan B.

In health services, our health services clinicians write prescriptions that include female hormone contraception for varying reasons, including the prevention of pregnancy. However, abortion-causing drugs are not prescribed, nor are they covered in our health plan. These agents are profoundly inconsistent with the belief system of our college and our religion. Requiring coverage of abortion-causing drugs is a direct violation to the spiritual and behavioral standards that Calvin College expects of ourselves and our students. It forces Calvin College to add these drugs to the formulary for our students, and it would violate our religious liberty.

To teach one set of values and beliefs and then provide abortion-causing agents for students would lack integrity. We challenge our students to live out the values they believe. Our intent and purpose is that our entire faculty, staff, and students are living examples of believers trying to follow in the footsteps of Jesus Christ. We must ensure that our practices follow our belief.

Now, even when Americans hold vastly different views in the sanctity of life, this mandate raises a point that should be examined by all: Does this country value religious freedom or not? Fur-

ther, the mandate elevates contraception and abortive drugs to the level of preventative health care. They are not. Plan B, and Ella, should not be considered equivalent to cancer screening or vaccinations. Pregnancy is not a disease. This is a premise that I reject both religiously and medically.

The recent White House accommodation purports that the President has the legal authority to recognize or deny religious liberty. As Christians, however, we believe that these rights come from God. And as U.S. citizens, we believe our Constitution affirms and guarantees religious liberties. There is a limit to what the government can do to compel us or not to do. In the particular matters of faith and conscience, it is in the best interest of all Americans of every ideological stripe that this limit, this line not be crossed.

This is not about politics. This is not about contraception. This is not about depriving women of health care. Rather, this is personal. This is about my daily life as a physician, a Christian, and as the medical director. Will I be able to practice medicine within my belief? Will Calvin College be able to continue its historic tradition of living out faith as it teaches? The government that is of the people, by the people, and for the people should not force people to violate their conscience.

Thank you, Chairman.

Chairman ISSA. Thank you.

[The prepared statement of Dr. Champion follows:]

“Lines Crossed: Separation of Church and State. Has the Obama Administration  
Trampled on  
Freedom of Religion and Freedom of Conscience?”

Testimony of Laura Champion, M.D.,  
Medical Director and Physician, Calvin College, Grand Rapids, Michigan  
Before the  
Committee on Oversight & Government Reform  
U.S. House of Representatives  
February 16, 2012

Good morning Chairman Issa and Ranking Member Cummings:

I appreciate your invitation to share my concerns about the contraceptive mandate. My name is Dr. Laura Champion and I am the medical director and a practicing physician at Calvin College Health Services in Grand Rapids, Michigan. I graduated from the University of Washington School of Medicine in 1996 and have been Board Certified in Family Medicine since 1999. I provided primary care in a private practice in Grand Rapids, MI until June 2011 when I assumed the medical director role at Calvin College. I want to share my concerns with you as a person who medically understands what is at stake and who has the responsibility for negotiating and providing the student insurance coverage to the students at Calvin College, a private, accredited, four-year, Christian liberal arts college. We are an institution whose religious character and mission is central to everything we are and everything we do.

In order to understand our religious objection, you need to understand that we take seriously our faith commitments, our holistic student health services, and our intellectual mission. Since 1876, this Christian liberal arts college in Michigan has built a sterling reputation for academic excellence. Consistently ranked in *U.S. News and World Report* as a top liberal arts college, it is one of only four colleges in the nation to receive a Senator Paul Simon Award for Campus Internationalization. This contraceptive mandate jeopardizes our commitment to international students who would be negatively affected by the college not being able to provide a health insurance option to them. Calvin is fortunate to have a fully staffed Health Services Department to serve the medical needs of our student body. We require that each student have health insurance to attend our school. We offer an affordable option for those students who enroll under-insured. Great care was taken in crafting the student health plan to ensure that it reflects the values and beliefs of Calvin College and the Christian Reformed Church. This student health plan covers all preventative care at 100% according to the medical definition of preventative care; we do not cover Plan B, Ella, or sterilization.

I am concerned about the many specific facets of these regulations and I am concerned as a health provider about the wide sweeping regulatory overreach that the mandate on contraceptives signals. Contraception is not controversial at our school. Clinicians write prescriptions that include contraception for a variety of reasons, including the prevention of pregnancy. However, abortifacient agents are not prescribed, nor are they covered in our health care plan. The advocacy of these agents is profoundly inconsistent with the belief system of our college and our religion. To force the access of such agents upon our students would violate our religious liberty. Calvin College is committed to ethical, moral and spiritual higher education. To teach one set of values and beliefs and then to provide abortifacient

agents for students would lack integrity. We cannot expect to train ethically minded leaders for the future and then require a compromise of values and beliefs by the colleges and universities that supply such leaders.

I want to underscore that our College and our Health Services Department would be severely harmed by the mandate requiring abortion causing drugs. We challenge our students to live out the values they believe. Our intent and purpose is that our entire faculty, staff, and students are living examples of believers trying to follow in the footsteps of Jesus Christ. We make every effort to ensure that our practices follow our beliefs. Forcing Health Services to be part of the distribution of abortifacient agents is an affront to our principles and sends an inaccurate message to our students. Requiring coverage of abortifacient agents is in direct contradiction to the spiritual and behavioral standards that Calvin College expects of ourselves and our students.

Even when Americans hold vastly different views on the sanctity of life, this mandate raises a point that should be examined by all: do we value religious freedom in our country or not? Further, the mandate elevates contraception and abortive drugs to the level of preventative health care. They are not. Plan B and Ella should not be considered equivalent to cancer screening or vaccinations. Pregnancy is not a disease. This is a premise that I reject both religiously and medically.

Recently the White House purported to offer an accommodation—perhaps the most fundamental flaw of which is that religious liberties are not something that any president has the legal authority to recognize or deny. As Christians, we believe these rights come from God, and as US citizens, we believe our

Constitution affirms and guarantees our right to religious liberty. There is a limit to what government can compel us to do or not do particularly in matters of faith and conscience. It is in the best interest of all Americans, of every ideological stripe, that this limit, this line, not be crossed.

This is not about politics, this is not about contraception, and this is not about depriving women of health care. Rather, this is personal. This is about my daily life as a physician, a Christian, and a Medical Services Director. Whether I will be able as a physician to practice medicine within my belief system. Whether Calvin College will be able to continue its historic tradition of living out the faith it teaches. A government that is of the people, by the people, and for the people, should not force the people to violate their consciences.

I oppose this mandate for the reasons and rationale above. I respectfully request your help so that Calvin College does not have to violate its religious beliefs.

Chairman ISSA. I will recognize myself. And although—Mr. Garvey, you are a Ph.D.; is that right?

Mr. GARVEY. I wish I were, no. But I'm just—I'm a lawyer. So I have a J.D., but not a Ph.D. I didn't write a dissertation.

Chairman ISSA. Oh, my goodness, and we were telling people to treat you well here.

Let me go through this very quickly, and I know you have heard I mean no disrespect on the first panel, so I will preface with that same thing. Jesus didn't practice here in the United States. He practiced in the Holy Lands. And Mother Teresa, although she visited, she didn't practice here in the United States. But as I understand correctly as to each of your institutions, if Jesus came with his disciples to the United States and paid any stipend whatsoever to his otherwise volunteers, he—because he administered to people who were, I guess, not Jewish, and there was no Christianity per se, and he didn't require that they embrace his view of everything in order to be healed or to be in any way administered to, he wouldn't qualify; he wouldn't qualify for this exemption, would he? Or, more importantly, Mother Teresa. She dealt with lepers. She wouldn't be qualified under this rule for an exemption because it certainly wasn't a church activity, even though it was compassion at its highest level.

So let me reverse the question now that I have made the—gone into ground perhaps beyond my training. If I understand correctly, each of the institutions you attend, if you fire everyone who is not of your faith and dismiss every student not of your faith, you would qualify for the exemption, wouldn't you? If you cloister yourselves only in one faith, closing off the opportunity to provide for all, you would qualify, wouldn't you?

Mr. GARVEY. No. I'm really sorry to say, but the exemption is even narrower than that.

Chairman ISSA. Oh, so basically—and so basically even if it is only your faith, if you are only teaching your faith, even if you are only working with people of your faith, and even if you only have in attendance people of your faith, this exemption is narrower than that?

Mr. GARVEY. That's right. It is narrower than that.

There are two additional provisions. One is that our purpose has to be catechizing or inculcating precepts of our faith, and we do things besides that at our universities. The final and more important one is that we have to be one of those institutions, few in number, that are exempt under tax law from filing a Form 990, and that only applies to churches and synagogues, mosques, and religious orders.

Chairman ISSA. So I just want to understand, and the ranking member, I hope, wants to understand, so it's only the narrow definition of a church, or a mosque, or a temple defined specifically as a place of worship that's exempt; otherwise, it's not exempt—

Mr. GARVEY. Religious orders, priests and nuns.

Chairman ISSA. The convent would qualify.

Mr. GARVEY. And their integrated auxiliaries. It's a—it's fairly narrow. You have—you have the right idea.

Chairman ISSA. So I was raised in two separate faiths. My parents agreed that we would suffer twice, and it served me well, but

my father was an orthodox Christian, and my mother a Mormon. So, you know, on Saturdays, we would go to the teachings of the faith for Mormons. That wouldn't qualify, because that wasn't actually a church service, but they were teaching us.

At what point do we cross out of it? I just want to understand, have they limited the definition of religion to be only inside the sanctuary of the church itself? Is that essentially what we have?

Mr. GARVEY. Maybe the larger and more important point, as Bishop Lori was saying in this morning's first panel, one of the unfortunate things about the narrow definition of religion is that it seems to confine religion to something that happens in church when you are on your knees, and to ignore what all of our Christian and other religious institutions think are important.

But let me just stick with Christian institutions. The living out of the beatitudes to feed the hungry, to give drinks to the thirsty, to clothe the naked, to visit the sick, those are things that are not considered religious activities, but they are the reason that most of our health care and social service organizations exist. And then to teach and spread the gospel to all nations is what our universities do.

Chairman ISSA. Well, now you came here as experts, physician and experts in the field, and that's why we invited you here. But let me ask just one sort of conjecture, or ask you to stretch a little bit.

Ministers, priests, rabbis, clerics serve in our U.S. military for purposes of religious outreach. If I understand correctly, we are sort of saying, well, because it is not—their activity would not be limited to just inside a church, but rather they counsel, they advise, they bring people solace, in fact, they go to the hospital and visit people as they are dealing with the wounds of war, this definition is designed to be sort of “that doesn't count.” That's not religion in this definition.

Not related specifically to the medical procedures that our minority has talked about so endlessly, isn't this definition one that would begin to erode the very fundamental question of what is religious activity in America, and what is religious freedom?

Ms. GARRETT. There's no question of that. The Federal Government obviously has a great deal of experience in writing exemptions for religious activity. Unfortunately, this is the very narrowest definition that we have seen. And all of our organizations wrote to Health and Human Services when these regulations were proposed, letting them know either individually or through organizations with which we were affiliated about our grave concerns over this exceedingly narrow definition.

Chairman ISSA. Thank you.

Mr. Cummings, I might hope that you could get some women onto your panel here to ask questions now that we have women they were asking for on the first panel.

Mr. CUMMINGS. Dr. Garrett, let me ask you, what did that—you said you all wrote—what did you say? In other words, you wanted women—you heard Ms. DeLauro talk about her health issue, 25-year survivor of cancer. What did you all say with regard to trying to strike a balance that satisfies you?

Ms. GARRETT. We, through an organization, Council for Christian Colleges and Universities, with which Oklahoma Christian is affiliated, wrote both to Health and Human Services and then to the White House regarding our concerns about the exceedingly narrow definition, and also about the fact that these proposed regulations cover not only contraceptives, but also abortion-inducing drugs, and, of course, we wrote about our grave concerns over that.

Mr. CUMMINGS. And if someone wanted to have a—needed contraceptives, how do you—how do you deal with that then, I mean, if they wanted insurance with contraceptives in it; in other words, that the contraceptives were covered?

Ms. GARRETT. Well, at our institution we offer contraceptive coverage.

Mr. CUMMINGS. And so—so you had no problem with that?

Ms. GARRETT. Not with contraceptives. Our issue with respect to what is covered is with the abortion-inducing drugs like Plan B and Ella.

Mr. CUMMINGS. Doctor, you look like you wanted to say something. Did you? You were squirming a little bit.

Mr. THIERFELDER. Well, I—

Mr. CUMMINGS. I'm trying to understand exactly what the concern here is with the administration's policy. I understand that you do not want to pay for a service that you have moral objections to but you are not being asked to pay for.

Studies show time and time again that expanding access to contraception is either cost neutral or saves money. According to National Business Group on Health, a nonprofit organization representing large employers on health policy issues, the cost of adding contraceptive coverage to a health plan is more than made up for in the expected cost savings. Likewise, when the Federal Government added prescription contraceptives to the Federal Employees Health Benefits Program, it found that this caused no increase in the government's premium costs. Actuaries that have studied this issue have concluded that providing contraception is cost neutral.

Additionally, the administration's accommodation allows employees to go directly to the outside insurance company and avoid any interaction with the religious school or hospital itself. Under the accommodation, none of the institutions you represent would be required to provide coverage precisely because of the administration's respect for your religious beliefs. Why is the accommodation not acceptable?

Mr. THIERFELDER. Because I don't see it as being any different than the original mandate. In other words, we still have a contract with the health care plan, health insurer. The plan we have right now is that we can carve those out and say we don't provide those services; however, with this new plan, we would be forced to have an insurance provider that we would have to provide those services to our employees. You are saying we don't have to pay for it, but somebody is going to pay for it, and being that it is our insurance plan and our provider, we would be forced to pay them our premiums. They are going to then, supposedly for free, provide these services to our employees, and—but I don't see the difference between the two. In both cases our insurance provider would be cov-

ering it whether the mandate was the original one or we have this new exemption. RPTS COCHRAN DCMN HERZFELD [1:35 p.m.]

Mr. CUMMINGS. And if you did not see it in the premium, you still would feel you are paying for it; is that it?

Mr. THIERFELDER. Yes.

Mr. CUMMINGS. Dr. Oliver.

Mr. OLIVER. I would say additionally, Mr. Cummings, that many of us, like my institution, have self-funded plans so we are the direct provider. In that case there is no insurance company that can absorb that cost. It is directly paid by us. And as I mentioned in my testimony, we provide preventative health services for women, including contraceptives. We are opposed to abortifacients, including Plan B and Ella, which are required by this mandate.

And I would further say in regard to the accommodation, with all due respect to the administration, they said that there was an accommodation, but the rule is exactly as it was published on August 1, 2011. Nothing is changed. There is just a promise that something will change in the future.

Ms. GARRETT. I would like to add one other wrinkle to this, and that is for all these employers, they will be required to be involved in some manner, because they must provide a list of who is covered as well as the applicable dates of coverage to the insurance company. So the involvement of the employers in assuring that women have access to the contraceptive and abortifacient coverage is incapable.

Mr. CUMMINGS. Dr. Champion.

Dr. CHAMPION. I understand that when you are asking if we are no longer required to pay for it, if it takes it out of our clear conscience. And because I am specifically charged with the duty of designing and signing my name to the student health care plan at Calvin College, when you force me—when a mandate forces me to add in Ella and Plan B as part of our package, especially as a preventative package which would be 100 percent coverage, so we are responsible for managing that cost, those—that my signature is completely in discord with my belief system. So even if the insurance company can promise that they are not going to increase our premium by adding this expensive medication to the plan, you are still asking me to breach my religious liberty.

Mr. CUMMINGS. Thank you very much.

Mr. MCHENRY [presiding]. I thank the ranking member, and I recognize myself for 5 minutes.

Dr. Thierfelder, thank you for being here today. I certainly appreciate your leadership of my favorite institution, my alma mater, Belmont Abbey, and I appreciate your leadership in these tough times for the institution and what you have taken the institution through, as well as the monks and Abbot Placid as well. So just a few basic questions just so we have this on the record.

You are affiliated with a Benedictine institution.

Mr. THIERFELDER. A Benedictine monastery, Belmont Abbey, yes.

Mr. MCHENRY. And as such, who is the decisionmaker about the tenets of the faith?

Mr. THIERFELDER. Well, the Abbot Placid as chancellor ensures that we are solid in terms of our mission. If you look at our articles

of incorporation, the actual members of Belmont Abbey College, Inc., are the professed monks of Belmont Abbey.

Mr. MCHENRY. Okay. So truly when you describe the campus with the monastery at the heart of it, that is the incorporated nature of it as well?

Mr. THIERFELDER. Absolutely. It is central to who we are. In other words, the college is their apostolate. They came here. They are living out their vocation through this apostolate called Belmont Abbey College.

Mr. MCHENRY. Okay. And since your founding, you have educated and helped and assisted non-Catholics?

Mr. THIERFELDER. I haven't been here the whole time, but, yes, that is what the monks have always done extraordinarily well. They have always reached out. We are in Gaston County, and for those who don't know Gaston County, North Carolina, there is a high rate of unemployment, there is a great deal of illiteracy and so forth. We provide, I think, an invaluable service to our community. And our adult degree program is 70 percent women. And if you looked at our total enrollment of the College of Belmont Abbey College, you may think because we are a Catholic College, we must be all Catholics there. Maybe about 40 percent of all of our students are Catholic if you include the adult degree program.

Mr. MCHENRY. But you are a Catholic institution?

Mr. THIERFELDER. Absolutely. And that is the whole point, and that is why this is so devastating to us because our mission to reach out. And as I said in my remarks, we welcome everybody as Christ. It is like, come on in, we love you. And so for us then to have to turn around and say somehow we can't welcome you in or you can't be a part of our community is just averse to who we are.

Mr. MCHENRY. So, in essence, you are there as a result of the monks and the mission of the monks.

Mr. THIERFELDER. This was a call. I was not in higher education. I was in the private sector. I was in business. I was in sports medicine, sports law, and sports medicine and so forth. I came here, and so did my wife and my family, because we really believe we were called to be at this college, and that is why we are here is because of that commitment. And I came because there was a Benedictine monastery that had a college.

Mr. MCHENRY. Okay. So basically what happens if this rule is put through? You are faced with a choice of either paying a \$2,000 fine per employee—

Mr. THIERFELDER. Well, roughly right now for us the cost of this would maybe be about \$300,000 a year that we would have to pay.

Mr. MCHENRY. Okay. And so you would either have to pay the fine or act counter to your faith.

Mr. THIERFELDER. Which we can't do. I mean, we just will not violate our religious beliefs. So we will have to find a way, depending on what happens, to get through this. But one of them will not be in any way sacrificing our moral convictions.

Mr. MCHENRY. So pay the \$300,000 fine or simply close down the college?

Mr. THIERFELDER. Well, you hope it would never come to that extreme. My hope is that there would be intermediate steps. The unfortunate part would be if it came down to somehow limiting health

insurance coverage or not being able to provide it in the same kind of way, I mean, that would be a terrible, terrible thing to do. I hope we would never come to that.

I am confident that we won't come to that, because I think hearings like this are made to maybe make these things better known and have a discussion. And obviously there may not be a lot of discussion in here today, but I am sure people will be following this, as I followed it, and my hope is that people will see the truth in this and realize that we need to do something about this.

Mr. MCHENRY. Okay. So just for the record, how political are the monks on campus, and how political has Belmont Abbey been in its 130-year tradition?

Mr. THIERFELDER. Not political at all. I mean, if you know Benedictine monks, they are very quiet, humble men that live and pray together; that that is not what their—their interests and their life is not about politics.

Mr. MCHENRY. So you have just been called to action based on the actions of this administration and with the EEOC and now with the HHS mandate?

Mr. THIERFELDER. This is really—as I said, I respect what the ranking member, Congressman Cummings, had said. This shouldn't be adversarial. We are not trying to get anybody. We are not trying to enforce our beliefs on anybody. However, our beliefs are really important to us, and so all we are asking is that we are not coerced into violating our religious liberty.

Mr. MCHENRY. Thank you, Dr. Thierfelder.

Dr. Champion, you're the only medical doctor on this panel. So the President said if you like the health care plan you have, you can keep it. What do you say to that?

Dr. CHAMPION. Are you referring to the video we saw in the earlier panel?

Mr. MCHENRY. Yes.

Dr. CHAMPION. Right. If I was sitting in that audience, I would have been applauding the President for his vision. But when we mandate our Christian colleges and institutions to include abortive-causing drugs into their plan, and they have to answer to a higher calling and choose to no longer carry that student health plan, then inevitably we are limiting health care to students by closing down those very campuswide health services that were previously providing excellent care to their students, and now the student no longer can pick her favorite doctor, which goes against both promises he made on that video.

Mr. MCHENRY. Thank you.

My time has expired. Mr. Amash is recognized for 5 minutes.

Mr. AMASH. Thank you, Mr. Chairman.

I would like to thank all the witnesses for testifying today, but I would especially like to welcome Dr. Champion, who is here from Grand Rapids, Michigan, in my district, and from Calvin College, which is my wife's alma mater.

Dr. CHAMPION. You married well.

Mr. AMASH. Most of my friends went to Calvin College as well.

Dr. Champion, can you give us an example about how you make decisions about the student health care plans at Calvin College and how the mandate will affect your current plan?

Dr. CHAMPION. Yes. So when I came to Calvin College this summer, I analyzed the student plan that was there. I learned that we charge \$15 for every visit. We have phenomenal state-of-the-art physicians doing evidence-based care, yet Calvin chooses to subsidize their care by limiting the cost, even though we have a student plan that we do bill at 100 percent when they come in for preventative care. This is because we really emphasize the value of being able to instill and educate and train.

When I analyzed the current plan, it showed that if she needed to come in, for instance, for a sexually transmitted disease evaluation, we had to charge her \$10 for a gyn exam, \$5 for a wet mount, and pretty soon the conversation for an underinsured student who didn't choose our plan would end up needing to be taken about the money relationship to the cost of care. So I redirected that fee in the next design plan to incorporate all of that in and redirect the visit toward the clinician's experience-guided evidence and not a discussion about cost. So by changing the plan in those very specific ways, I am able to be a good steward of the limited plan we can offer them.

When I learned that we have to add abortative agents and expand the coverage to include surgical sterilization, I am aware that it substantially raises the premium because it does raise the risk, even if a 20- or 21-year-old student never requests a tubal ligation or vasectomy, because we have to add it into our plan.

So there are financial reasons for me to be a good steward of the plan, but more importantly there are severe contradictions to my personal religious beliefs by adding Ella and Plan B into the plan.

Mr. AMASH. And you are the only medical doctor on the panel, so could you elaborate on why you are opposed to having birth control and abortifacients listed as preventative services?

Dr. CHAMPION. Right. Well, thank you for asking that, because this is really important to me.

Preventative care defined by physicians has to do with anticipating future care by analyzing their past history. So you are asked your social history, your medical history, what age you are. We use your age to determine what your risk is. So a 50-year-old's risk for heart disease or colon cancer will help us help them determine which preventative care screening they need.

When it comes to pregnancy, since it is not a disease, we are now treating a concern for the patient, which we actually move into a visit called diagnostic care. So the diagnosis is contraception counseling. We often will do it at our physical as a courtesy to her because she is so healthy, we don't want to make her come back. But it is actually not a preventative care service.

Outside of that, Plan B and Ella are not preventative at all, because they are actually a result of behavior where she is purposely taking the medication to limit her risk for sustaining a pregnancy that may have started a day or 5 before taking the pill.

Furthermore, when you talk about preventative care in a young woman, the U.S. Federal Government did give us new recommendations in December 2010. They did it under the CDC, and they asked physicians to step outside of whatever their Christian or other values are and to start speaking to patients about preventative care when it comes to STDs. And they have required or

strongly recommended physicians to now ask patients to limit the number of lifetime partners and delay the onset of intimacy.

Those guidelines from the Federal Government are well within preventative care measures, and I am happy to abide by them because they do follow my principles, but they are also scientifically based and show that you can minimize STDs by giving this recommendation preventatively.

Mr. AMASH. Does the President's so-called compromise make the mandate any less restrictive on your ability to freely exercise religious and conscientious beliefs?

Dr. CHAMPION. When the President spoke on Friday, I had a glimmer of hope that there was going to be an accommodation that perhaps broadened his definition. But he really doesn't have the right to decide the definition of when it is against my conscience. But what turned out to be in the written statement was no different than what he had presented us on August 1st of last year.

Mr. AMASH. Thanks so much.

Mr. LANKFORD [presiding]. Thank you.

With that, I yield to Mr. Murphy 5 minutes.

Mr. MURPHY. Thank you, Mr. Chairman.

Mr. Chairman, I know that the chairman of the full committee is not here right now to answer this question, but I appreciate the witnesses' patience today. It has been a long day for both the committee, the staff and the witnesses. But we have been going round and round on this question of what the scope of this hearing is today and whether or not it is appropriate to have women who have been affected by their inability to get birth control, have been affected by their inability to get a full range of reproductive rights to have their voices here today. And I think the minority, Democrats on this committee, have tried every means possible to try to get that voice represented here today, and obviously we were astonished to find not a single female on the first panel.

So, Mr. Chairman, I know you are not ultimately making the decisions, that you are sitting in right now for Mr. Issa, but there might be another way around this. We are having a hearing today that effectively limits the ability of women to present their case on why they deserve to have access to the full range of reproductive health care if we can't have somebody like Sandra Fluke testify today about her medical condition and why access to contraception is so critical to her health, if we are now approaching the last minutes of this hearing without the ability to hear the other side of this debate.

There are two sides. I admit that there is a very important question about religious freedom, but is also a very important question about women's health care, and we have been told repeatedly today by Chairman Issa and others that this is not the time, this is not the day to debate that second question of the appropriateness of the rule granting women access to the contraception no matter where they work.

Maybe there is one last way out of this, which is to schedule a second hearing, to have a second hearing that would allow us to focus on the question of whether or not we are jeopardizing women's health care by not having a strong rule in place to give them

access to preventative health care services and reproductive health care services regardless of where they work.

So I will pose the question to you, Mr. Chairman. Do you think that the majority would entertain the notion of convening a second hearing? I understand we probably might not even get a witness at that hearing. Maybe we would get one, maybe we would get two witnesses. But do you think that the majority would entertain the idea of convening a second hearing to focus on this question of the appropriate level of coverage—

Mr. MCHENRY. Will the gentleman yield?

Mr. MURPHY. Certainly I would yield.

Mr. MCHENRY. I would be happy to engage in this. But the title of today's hearing is "Lines Crossed: Separation of Church and State. Has the Obama Administration Trampled on Freedom of Religion and Freedom of Conscience?"

That was the question posed today about this hearing, not a question about your access or anyone's access to contraceptions. That is a completely different subject. When the chairman—I am sure the chairman would be happy to have the conversation with you about future hearings and getting your input on that.

But I don't think there is any movement afoot in Congress to ban contraception. That is not what this is about. It is about forcing religious institutions with deeply held moral convictions to do something that is counter to their faith.

And with that, since I have taken so much time, I would ask unanimous consent for 30 additional seconds for the gentleman.

Mr. LANKFORD. Without objection.

Mr. MURPHY. Thank you very much, Mr. McHenry.

I think once you have waded into this debate and selectively chosen to only talk about one side of it, which is the ability of a religion to decide whether or not they provide a basic range of health care benefits to their employees at a Catholic hospital or at a religious school, I think you have to talk about the second piece of the debate.

I don't think you can choose as a committee, I don't think we should choose, to only discuss one side of the debate. We thought that that conversation should have happened today. We thought that at least one witness should have told the perspective of a woman struggling to get access to reproductive health care.

But having failed in that effort, I think that we should have a second hearing. I know that we will have the deck stacked against us again, and I appreciate the gentleman for offering the fact that a discussion could certainly take place in the future. I think it would be incredibly important to this debate and to this committee to hear from women, to hear from women that are struggling with this problem on a daily basis. And if that can't happen today, then, Mr. Chairman, I would submit it should happen at a hearing in the future, hopefully within the next several weeks.

Thank you, Mr. Chairman.

Mr. MCHENRY. Mr. Chairman, a point of clarification. There are two individuals that are female on the panel here now, and I just want to make sure the record reflects such.

Mr. MURPHY. I think, Mr. McHenry, that is duly noted. But we have had nine witnesses. Two of the nine have been female. I don't

think that accurately represents the debate that is happening in the public when you are talking about an issue relevant to women's health care. To have two of nine witnesses be females, I think, is offensive to the dialog that is happening in the public, and I think that we can remedy that if we come back and do this a second time on the issue specific to the health care concerns of the millions of women, the 99 percent of women, in this country who have used or do use contraception.

Mr. LANKFORD. With that, the gentleman's time has expired.

I would be remiss if I didn't recognize, as I recognize myself for the next 5 minutes of questioning time, to be able to comment on that as well, Mr. Murphy.

The topic today is on religious freedom. The issue that came up with this that the President stepped into the middle of was an issue of religious faith. This is not an issue of limiting, though I am quite aware that the media and that my friends on the Democrat side of the aisle are trying to make this into an issue to make conservatives look like they are barbarians at the gate trying to take away women's reproductive health. That is not the issue. That has been widely accepted. There are contraceptives available for free all over the country in many locations. Contraceptives are covered in most of the health plans in America.

The confusing thing to the administration and to some individuals, and not saying Mr. Murphy is this way, is that people that have deep religious faith, their faith extends beyond the walls of the church. And to define you can have your religion as long as it is within the church building completely violates the principle of James 1:27, that true religion is this; that we watch out for the orphans and widows in their distress, and that we keep ourselves from being polluted by the world. That is a basic tenet of Christian faith.

Mr. MURPHY. Will the gentleman yield?

Mr. LANKFORD. Let me finish, and I will try to yield you some time.

To be able to say you can practice your faith in this building here, but if you extend out to taking care of the orphans and the widows in their distress, we are going to reach in as a government and define for you how you practice your religion. As I mentioned earlier in my earlier comments, the essence of this is can this administration or any future administration step into a church or church-based institution and say, I know your doctrine; I have a different doctrine; you will give in to my doctrine, or I will fine you? That is what occurred.

Now, I understand the topic deals with something very controversial, but the essence of this conversation is can the Federal Government step into a religious institution and redefine their doctrine for them. The real issue is who defines the doctrine and religious teachings and religious practice of the church.

I ask for unanimous consent for 30 seconds to give you an opportunity, and then I will finish up my questions.

Mr. MURPHY. Thank you very much, Mr. Chairman.

Just to your first point, which is that contraception is widely available, and thus we don't need to have that perspective here and we don't need to have a second hearing, well, I don't think a bunch

of guys, a bunch of men, on this committee should be making the decision as to whether contraception is available. And frankly, if you had allowed for Sandra Fluke to testify here today, she would have told you it was not available to her, that it came at considerable financial burden to purchase it on her own.

So, again, I think we are getting to the root of this problem is that to have a woman's perspective, to have a health care consumer's perspective would be a lot more useful than for a bunch of males——

Mr. LANKFORD. With that, I reclaim reclaim my time. And let me just mention this one thing to you as well on that. It has been interesting to hear the conversation about there should have been more women on the panel, and the folks that mostly said that are now gone when women are on the panel. There was a conversation there should have been some physicians on the panel. Now that there is a physician on the panel, most of the folks that raised that issue are now gone and not participating in the conversation. So I understand that.

The issue gets to the core still: Can the Federal Government reach into a church or religious institution and define for them their doctrine? There is nothing in currently how this is being practiced from not continuing to press forward. Let me give you a good example of that.

"The Secretary shall make these decisions" opens it up that within a year or two to say, currently we are forcing all these different providers to provide abortifacients, contraceptions and sterilizations for free. Under the guise of full range of reproductive rights, there is nothing to stop the Secretary from stepping in 2 years from now and saying, now all institutions will cover abortions, the procedure, for free.

There is nothing in this that restrains that, because it is not the Federal Government paying for it. So you'd say, well, the Hyde Amendment would prevent it. No, this is stepping in and saying those insurance companies will provide it for free. So we will step in between the contract between a religious institution and the insurance company that they have contracted with and say, we will redefine the contract for you, because I know you are religious, and you don't know enough to know this is right, but we are going to tell you this is the right thing to do, and here is your new faith. Your new faith is you cover these things because it is the right thing to do. Your new faith will be that you will cover abortions in some future day because that is the right thing to do to give the full range of reproductive health.

You could say that is some strange conspiracy, but quite frankly, we just watched the Catholic bishops lose a contract for taking care of human trafficking after they had tremendously high scores for one reason: They would not encourage abortions. Nothing covered abortions for them. They would not say to the people they were taking care of, there is a place to go get an abortion. And because they won't do that, they lost the contract.

This is a religious issue, and it is one of these things that I understand when you are with your own party, you look at that administration and want to help protect him and deflect the issues. Long term this has serious consequences regardless of who is the

President at some future day; what is the role of the church in that.

With that I would be very honored to thank you for coming and sharing of your own time and your own backgrounds and submitting your statements and doing that. My time has expired.

Mr. Davis is recognized for 5 minutes.

Mr. DAVIS. Thank you very much, Mr. Chairman, and I also want to thank the witnesses for being here and being a part of this discussion.

Since Ms. Fluke was not given the opportunity to testify, I am going to read what her testimony would have been. She is a third-year student at Georgetown Law School that we requested. Here is what she would have said had she been here.

“A year ago, my friend from law school had to have her ovary surgically removed as a result of Georgetown’s refusal to cover contraceptives. My friend choose Georgetown Law because of its commitment to public service, its location and a generous scholarship the school had awarded her. She wasn’t aware that Georgetown’s student health insurance doesn’t cover birth control, but she is gay, so it wasn’t a big concern.

“During law school, my friend was diagnosed with a syndrome that causes painful cysts to grow on one’s ovaries. The treatment for the syndrome is birth control, which can successfully hinder the growth of cysts. When she was first diagnosed, it seem routine. The doctor wrote a prescription for birth control. Knowing of Georgetown’s policy not to cover birth control for anything but medical conditions, the doctor wrote ‘for non contraceptive purposes’ on the prescription, and off my friend went to the pharmacy. But she was turned down because Georgetown’s insurance carrier assumed my friend wanted the medication to prevent unwanted pregnancy.

“She worked with her doctor’s office to navigate the university’s process to get coverage, but no matter what she did, she was denied coverage of her much-needed medication. My friend’s prescription for birth control cost over \$100 a month at her local pharmacy. She paid out of pocket for several months, but she was soon unable to afford the high cost of the medication. She had to stop taking it.

“In my friend’s final year at Georgetown, she began having sharp pains in her abdomen. It was so painful, she woke up thinking she had been shot. When all the tests were completed, she learned that she had a plum-sized complex cyst growing on her ovary. The doctors had to remove her entire ovary because the cyst was just too complex. It had grown from the size of a plum to roughly that of a tennis ball. Had she been able to take birth control, the cyst would likely not have grown so rapidly or become so complex. Birth control could have made all the difference from preventing the loss of my friend’s ovary.

“A year passed, but the complications from the removal of my friend’s ovary are far from over. While we are here this morning, she is at a doctor’s appointment set to determine if the removal of her ovary has forced her body into early menopause. She is having weight gain, night sweats, hot flashes and other symptoms of menopause. And my friend is only 32. If she is in early menopause,

no fertility specialist in the world will be able to help her have children of her own.”

This is a heart-wrenching story, and I am sorry we could not hear directly what this witness would have said. I think this is part of the complexity of the issue, and I would like to ask unanimous consent that the statement be entered into the record.

Chairman ISSA [presiding]. Without objection, so ordered.

Mr. CUMMINGS. And I yield back.

Chairman ISSA. I want to thank all our witnesses today. You have been very generous. All of you were here for the first panel and the second panel, and I appreciate your contribution to our better understanding of religious freedom, first from the clergy standpoint and now from the people so close to the administering of other services on behalf of religious organizations.

Thank you. We stand adjourned.

[Whereupon, at 2:05 p.m., the committee was adjourned.]

[Additional information submitted for the hearing record follows:]



**Transcript of LCMS President Rev. Dr. Matthew C. Harrison's**

**Feb. 16 Testimony before House Committee on Government and Oversight**

"Mr. Chairman, it's a pleasure to be here. The Lutheran Church—Missouri Synod is a body of some 6,200 congregations and 2.3 million members across the U.S. We don't distribute voters' lists. We don't have a Washington office. We are studiously non-partisan, so much so that we're often criticized for being quietistic.

"I'd rather not be here, frankly. Our task is to proclaim, in the words of the blessed apostle St. John, the blood of Jesus Christ, God's Son, cleanses us from all our sin. And we care for the needy. We haven't the slightest intent to Christianize the government. Martin Luther famously quipped one time, 'I'd rather have a smart Turk than a stupid Christian governing me.'

"We confess that there are two realms, the church and the state. They shouldn't be mixed – the church is governed by the Word of God, the state by natural law and reason, the Constitution. We have 1,000 grade schools and high schools, 1,300 early childhood centers, 10 colleges and universities. We are a machine which produces good citizens for this country, and at tremendous personal cost.

"We have the nation's only historic black Lutheran college in Concordia, Selma. Many of our people [who are alive today] walked with Dr. King 50 years ago on the march from Selma to Montgomery. We put up the first million dollars and have continued to provide finance for the Nehemiah Project in New York as it has continued over the years, to provide home ownership for thousands of families, many of them headed by single women. Our agency in New Orleans, Camp Restore, rebuilt over 4,000 homes after Katrina, through the blood, sweat and tears of our volunteers. Our Lutheran Malaria Initiative, barely begun, has touched the lives of 1.6 million people in East Africa, especially those affected by disease, women and children. And this is just the tip, the very tip, of the charitable iceberg.

"I'm here to express our deepest distress over the HHS provisions. We are religiously opposed to supporting abortion-causing drugs. That is, in part, why we maintain our own health plan. While we are grandfathered under the very narrow provisions of the HHS policy, we are deeply concerned that our consciences may soon be martyred by a few strokes on the keyboard as this administration moves us all into a single-payer ... system. Our direct experience in the Hosanna-Tabor case with one of our congregations gives us no comfort that this administration will be concerned to guard our free-exercise rights.

"We self-insure 50,000 people. We do it well. Our workers make an average of \$43,000 a year, 17,000 teachers make much less, on average. Our health plan was preparing to take significant cost-saving measures, to be passed on to our workers, just as this health-care legislation was passed. We elected not to make those changes, incur great cost, lest we fall out of the narrow provisions required under the grandfather clause. While we are opposed in principle, not to all forms of birth control, but only



abortion-causing drugs, we stand with our friends in the Catholic Church and all others, Christians and non-Christians, under the free exercise and conscience provisions of the U.S. Constitution.

"Religious people determine what violates their consciences, not the federal government. The conscience is a sacred thing. Our church exists because overzealous governments in northern Europe made decisions which trampled the religious convictions of our forebearers. I have ancestors who served in the Revolutionary War. I have ancestors who were on the Lewis and Clark expedition. I have ancestors who served in the War of 1812, who fought for the North in the Civil War – my 88-year-old father-in-law has recounted to me, in tears many times, the horrors of the Battle of the Bulge. In fact, Bud Day, the most highly decorated veteran alive, is a member of The Lutheran Church—Missouri Synod.

"We fought for a free conscience in this country, and we won't give it up without a fight. To paraphrase Martin Luther, the heart and conscience has room only for God, not for God and the federal government. The bed is too narrow, the blanket is too short. We must obey God rather than men, and we will. Please get the federal government, Mr. Chairman, out of our consciences. Thank you."

The American Association of ProLife Obstetricians and Gynecologists objects to the U.S. Department of Health and Human Services mandate that contraceptives, emergency contraception, and sterilization be provided for all women without cost. This mandate fundamentally violates the conscience and First Amendment rights of many individuals, institutions and health plans that seek to provide medical services in accord with their own beliefs, and prioritize medical treatments according to their own values.

In particular, religious institutions, individuals and health plans should be free to provide care according to their convictions. The mandate restricts the ability to regulate insurance reimbursement for services to the very narrow category of "religious employers," rather than acknowledging the basic right of all people to acquire health care in accordance with their beliefs. All physicians, clinics, hospitals and associations must retain the ability to provide and reimburse for services without coercion of this sort. And all individuals should have the right to receive medical care in a health system according to their own values and beliefs.

In addition to the issues of coercion inherent in such a mandate, the regulation requires coverage of FDA approved contraceptives that have clearly documented post-fertilization effects. AAPLOG believes that human life begins at fertilization. We are especially concerned that coverage of ulipristal (Ella), related to the abortifacient mifepristone, is included in this new regulation. Moreover, many physicians believe that other types of contraceptives may have post-fertilization effects and object to their mandated coverage.

AAPLOG especially opposes HHS announcement of this regulation without the usual 60-day comment period. We recommend that these objectionable provisions be withdrawn from the "Guidelines for Women's Preventive Services" under the Affordable Care Act. We request that AAPLOG members ask their congressmen to protest these mandates and any other mandates under the Affordable Care Act. And we urge our members and their representatives to support H.R. 1179 (and its Senate version, S.1467), The Respect for Rights of Conscience Act (which will provide comprehensive protection of conscience rights for individuals and institutions). We urge that physicians educate their patients about these violations of their fundamental rights.