

## 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.

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 good will 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.