

**Religious Liberty**

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KC Academy  
Religion Section  
Spring 2014  
Rev. James P. McIlhone



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**In this Session...**

- The Constitution on Religious Liberty
  - The Establishment Clause
  - The Free Exercise Clause
  - The Rise of Secularism
- The Teaching of the Church on Religious Liberty
  - Dignitas Humanae
  - The Catechism



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**In this Session**

- Threat to Religious Freedom Today
  - The Affordable Care Act (HHS Mandate)
- What can We Do?



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The First Amendment



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The First Amendment

- *Our First Most Cherished Liberty* – USCCB
  - Catholic and Protestant settlers arrive on our shores at invitation of Lord Baltimore
    - Vision of people of different faiths living together peacefully
    - Toleration Act of 1649
    - Vision was Short Lived



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The First Amendment

- Leaders of Revolution saw the Maryland situation as intolerable
  - Freedom of Religion was essential condition of free and democratic society
    - James Madison
    - George Washington
    - Thomas Jefferson



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### The First Amendment

- Result – Religious Freedom = part of the First Amendment of the Bill of Rights
  - "Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof."
    - Establishment Clause
    - Exercise Clause



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### The First Amendment

- Intent of Amendment
  - Allow all religions to co-exist with each other with no one becoming dominant
  - Recently religion is limited in public square
- Our Culture treats religion as a private matter between individual and God



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### The First Amendment

- Current laws treat religion as a force better kept out of public life
- Many say marginalization of religion is due to so-called Doctrine of Separation of Church and State
- Religion is personal NOT private
- Clauses of 1<sup>st</sup> amendment turned on head



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**Rise of Secularism**

- Law and culture are establishing un-religion as the religion of the land
- Further, rights Founding Fathers envisioned for believers are being granted to those of no religion
- Imposition of court mandated "rights" which have no textual basis in Constitution
  - Original intent of 1<sup>st</sup> amendment is being skewed



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**Religious Liberty and the Church**

- Catechism Par 2104-2105
  - Social duty of religion
  - Right to religious freedom
- Drawn from
  - *Dignitatis Humanae* (Religious Freedom)
  - *Nostra Aetate* (Relation of Church with non-Christian religions).



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**Religious Liberty and the Church**

- *Dignitatis Humanae* #1,2
  - All are bound to seek the truth, especially in what concerns God and his Church, and to embrace it and to hold on to it as they come to know it." (DH 2,1)
  - Council respects truth found in other religions



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### Religious Liberty and the Church

- Believers in other religions are to be respected
- DH calls all to constantly evangelize
- Religious freedom has to do with immunity from coercion in civil society (DH 2)
- Government to assume the safeguard of religious freedom of all its citizens..



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### What are Key Threats to Religious Liberty Today?



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### The HHS Mandate of the Affordable Care Act (ACA)



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### The HHS Mandate

- "All health insurance coverage is to include coverage for all FDA –approved contraceptives and sterilization."
  - Derives from requirement that group health plans and health insurers cover certain preventive services without cost sharing.



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### Preventive Services

- Spelled out in the Public Health Services Act
  - Women's preventive services include
    - contraceptive methods
    - Sterilization procedures
    - Patient education and counseling for all women with reproductive capacity



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### The HHS Mandate

- Regulations of ACA provide that "religious employers" may be exempted from this mandate



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### Religious Employer

- Inculcation of religious values is purpose of organization
- Organization primarily employs persons who share the religious tenets of organization
- Organization servers primarily persons who share religious tenets of organization
- Organization is non profit



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### The HHS Mandate

- Criteria restrict exemption to specific church related areas.
- Religious employers are not required to provide contraceptive coverage in group health plans
  - Failure to follow mandate leads to penalties of up to \$100 per day per member.



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### The HHS Mandate

- Employers who decide not to offer any health insurance (but are required to do so) are subject to annual penalties of \$2,000 per eligible employee.
- This also applies to individuals purchasing insurance
  - They cannot opt out of the HHS mandate
  - Refusal will lead to a penalty tax



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### USCCB Response

- The Address of Acbp Lori to the USCCB general Session Nov 2011
- Cardinal Dolan approaches the White House and Congress
- Advanced Notice of Proposed Rulemaking (ANPRM) – March 21, 2012
  - HHS Mandate revisited and accommodations would be made



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### Revision of HHS Mandate

- Notice of Proposed Rulemaking (NPRM) of Feb 6, 2013
  - Sets forth accommodations for non-exempt religious organizations
  - Effect = further restrict notion of "religious employer" solely to those organized as a nonprofit entity
- Solves one obstacle; but creates another



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### Revision of the HHS Mandate

- Further Requirements for this exemption
  1. Organization would have to be organized and operate as nonprofit entity
  2. Would have to oppose providing coverage for some or all contraceptive services on account of religious objections
  3. Would to hold itself out as a religious organization



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**Revision of the HHS Mandate**

- Further Requirements for this Exemption
- 4. Would have to execute a self-certification each year which states that it meets the above requirements and specifies the contraceptive services for which it will not provide coverage because of its religious objections



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**Revision of the HHS Mandate**

- Really no exemption
  - Eligible religious organizations would not be directly required to provide contraceptive coverage
  - Coverage would be provided by a third party
  - No ability to opt out of such coverage



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**Revision of the HHS Mandate**

- Contraceptive coverage still part of health care plan
  - Not directly paid for by the employer who has religious objections
- No exemption if self insured
  - Need a plan by a third part administrator



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### Little Sisters of the Poor Suit

- Sept 24, 2013, Little Sisters of the Poor file a class action suit
  - Little Sisters not qualified for religious exemption
  - Expected \$2,000,000 annually in fines for its 50 employees in 30 homes
- Compliance with HHS Mandate would violate vows



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### Little Sisters of the Poor Suit

- "Government shouldn't force us to abandon part of our faith at the price of continuing our mission."
- December 31, 2013, Justice Sonya Sotomayer blocked enforcement of HHS Mandate for Little Sisters and those in Class Action Suit



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### Little Sisters of the Poor Suit

- White house Response
  - Final rules will strike a balance
- Reaction
  - "Administration has declared itself the ultimate judge of what and who is religious enough to be entitles to the freedom of religion.



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### Little Sisters of the Poor Suit

- January 3, 2014 Administration Response
  - Challenge (of Little Sisters) did not impose a "substantial burden" and they failed to satisfy the standard for the...relief they seek"
  - They only have to certify that they object




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### Little Sisters of the Poor Suit

- Little Sisters cannot certify because they cannot deputize a third party to sin on their behalf
- Exemptions have been offered by White House to various individuals and groups




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### Religious Freedom Restoration Act

- Passed by Congress in 1993
  - Government action is invalid if it "substantially burdens a person's free exercise of religion..." unless
    - Application of burden is in furtherance of a compelling governmental interest
    - It is least restrictive means of furthering that interest




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### Recent Developments

- January 24, 2014 Supreme Court orders administration not to enforce HHS mandate against Little Sisters
  - Little Sisters need not use form prescribed by government for exemption
- They must inform HHS Secretary that they object on religious grounds



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### Where are we Now?

- HHS Mandate sets up a clear dichotomy between
  - Following the precepts of one's religion, and
  - Compliance with the law
- Free exercise of religion is substantially burdened where law coerces individuals to act contrary to religious beliefs



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### Where are We Now?

- Supreme Court agreed to hear two cases involving for-profit companies
  - Hobby Lobby
  - Conestoga Wood Specialties



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### Where are We Now?

- These with Little Sisters have a choice
  - Adhere to their beliefs
  - Not purchasing insurance at all, pay penalty
  - Purchase insurance and violate beliefs



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### Where do we Go from Here?



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### How?

- Make Brother Knights aware of threat to Religious Liberty
- Take time to view presentation
- Check out
  - USCCB Website
  - (<http://www.usccb.org/issues-and-action/religious-liberty/index.cfm>)
  - Supreme Website
  - ([http://www.kofc.org/un/en/public\\_policy/religious\\_liberty.html](http://www.kofc.org/un/en/public_policy/religious_liberty.html))



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## How?

- Host Special Event for the Fortnight for Freedom 2014 (June 21-July 4)
- Stay Informed
  - Join Religious Liberty Facebook Page of USCCB
  - Join Call to Prayer Facebook page of USCCB



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## Discussion



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