ADVANCING FAITH, FAMILY AND FREEDOM

Legislation Protecting Conscience is needed for the Obamacare HHS Mandate

- Religious freedom is protected in the First Amendment of the Constitution and laws such as the Religious Freedom Restoration Act (RFRA). Congress has passed in addition laws such as the Church Amendments, Coats Amendment, and the Hyde/Weldon Amendment over the past 35 years to protect the conscience rights of healthcare workers from government discrimination based on their objections to abortion and other services.

- However, the Patient Protection and Affordable Care Act" (PPACA, P.L. 111-148), (popularly known as "Obamacare") contains a federal mandate ("HHS Mandate") that bypasses conscience laws, and violates the First Amendment and RFRA. Specifically, the Mandate requires private healthcare plans to cover 'preventive care services for women." At issue is that it forces employers against their moral objections to provide contraceptives, sterilization, and drugs and devices that can kill an embryo.

- On August 1, 2011, the Department of Health and Human Services (HHS) issued regulations which said that all healthcare plans must include "FDA approved contraceptives and sterilization services," including drugs that can destroy a human embryo, sterilization services and contraception, without a direct cost to the patient. HHS exempted only churches from the Mandate. Religious organizations such as religious universities, non-profit charities and businesses run from a faith perspective are not exempt.

- In June 2014 the Supreme Court ruled in *Burwell v. Hobby Lobby Stores and Conestoga Wood Specialties v. Burwell*, two for-profit cases challenging the HHS Mandate on religious liberty grounds, in a 5-4 decision, that the government could not force family businesses to violate their religious beliefs as a condition of earning a living under threat of crippling fines. This landmark ruling for religious liberty applies to all closely held corporations.

- On July 10, 2015 the Administration issued a final rule addressing the so-called non-profit "accommodation." Per the rule, non-profits that object for moral or religious reasons to the HHS Mandate can notify HHS of their objection in writing and then HHS will then notify the employer's health insurance company or Third Party Administrator (TPA), who will then provide the health care plan recipients with the drugs and devices required by the HHS Mandate, at the employer's expense. Non-profits could notify HHS of their objection to the HHS Mandate, or can fill out the self-certification form, as specified by the July 28, 2013 final rule, and register their objection to their insurance company themselves. In whatever way the notification takes place, the end result is the same: the notification by the objecting party of its objection triggers HHS or the TPA to step in and alert the employer's insurer which in turn will provide the same contraceptives, sterilization, and drugs and devices that can kill an embryo on behalf of the employer and through the employer's health insurance company at the employer's expense. Under this accounting gimmick, religious and non-profit employers still remain the legal gateway for, and be forced to pay for, objectionable services for their employees. The Mandate still affects charities, universities, hospitals or others with moral or religious objections. The final rule also lays out a similar so-called "accommodation" for closely-held for-profit organizations.

- Businesses and their employees should be able to choose what health plan is right for them without the federal government requiring they provide coverage, even as required by the so-called "accommodation," for contraceptives, sterilization, and drugs and devices that can kill an embryo—drugs and services that violate their moral beliefs. Employers are forced to choose between dropping healthcare coverage for their employees and their families altogether or paying heavy penalties that will put them out of business.

- This Mandate puts the jobs, livelihood and healthcare of millions of Americans at risk. This is an important turning point in American history. This issue will decide if the federal government can require individuals to violate their moral beliefs and take part in providing items or services they morally oppose and which can take human life.

- The majority of Americans are not in favor of the HHS Mandate. A May 2014 FRC/ADF poll showed that the majority of Americans oppose the Obama Administration mandating religious employers to cover drugs which can destroy a human embryo, sterilization services and contraception: 53% disagree, while 43% agree and 4% are undecided.

- On March 23, 2016 the Supreme Court will hear oral arguments in *Zubik v. Burwell*, which was appealed from the U.S. Court of Appeals for the 3rd Circuit. Six other cases involving a number of challengers arising from multiple federal appeals courts have been consolidated with *Zubik*: *Little Sisters of the Poor v. Burwell* (10th Circuit), *Priests for Life v. Burwell* (D.C. Circuit), *Geneva College v. Burwell* (3rd Circuit), *Southern Nazarene University v. Burwell* (10th Circuit), *East Texas Baptist University v. Burwell* (5th Circuit), and *Roman Catholic Archbishop of Washington v. Burwell* (D.C. Circuit). Sometime before June 2016 the Supreme Court will rule in *Zubik*.

- Congress must pass new protections to apply to Obamacare, to stop it from forcing religious employers to provide objectionable services through their insurer. Rep. Diane Black (R-TN) in the House and Sen. James Lankford (R-OK) in the Senate introduced the "Health Care Conscience Rights Act" (H.R. 940/S.1919) to protect the religious freedom of businesses, insurers, employers, and individuals under Obamacare, and also provide greater rights to sue the government when federal funds are used to force health care workers to participate in abortion.

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