

# With Liberty and Justice for All? A National Perspective on the Escalating Threats to Religious Liberty Directed at Limiting the Impact of Church Ministries and the Pro-Life Movement

*Marie T. Hilliard*

## ABSTRACT

As the largest provider of non-governmental, non-profit health care and one of the largest and most efficient providers of social services in the United States, the Catholic Church has become viewed as a secular institution engaged in the welfare of the larger society, and at its behest. This has escalated into legislative and judicial initiatives that attempt to force the Church, and its members, to violate their tenets in the delivery of services, and to silence the exercise of free speech aimed at protecting the unborn. This article examines the societal influences that are eroding religious liberty and free speech, especially in the ministries of Catholic agencies and individuals. Furthermore, this article cites the foreboding impacts of continued acquiescence to these trends and the need to exercise the rights to religious liberty and free speech envisioned by the drafters of the First Amendment to the U.S. Constitution.

**A**S THE LARGEST PROVIDER of non-governmental, non-profit health care and one of the largest and most efficient providers of social services in the United States,<sup>1</sup> the Catholic Church is susceptible to being viewed as just another secular institution engaged in the welfare

---

<sup>1</sup> U.S. Conference of Catholic Bishops, Office of Media Relations, “The Catholic Church in America—Meeting Real Needs in Your Neighborhood” (August 2006) <http://www.usccb.org/comm/cip.shtml#toc10>.

of the larger society, and at its behest. Those who wish to deny the ministerial nature of Catholic endeavors for the common good have capitalized on this misperception for their own political agendas. Advocates for abolishing sexual mores, for providing abortion on demand, and for redefining the human being as a bearer of rights have engaged political structures in their pursuit of reshaping Catholic ministries in their own image. They have made some subtle and some blatantly obvious attempts at changing the public perception of the purposes of Catholic ministries. These have escalated into legislative initiatives that attempt to force the Church to violate its tenets in the delivery of its services to the vulnerable, particularly in the delivery of health care. Furthermore, there have been attempts to use legislatures and the courts to silence the exercise of free speech aimed at protecting the unborn.

First, there is a need to correct the misperception that Church ministries, particularly the ministry of health care, are secular endeavors. The ministries of the Church are in response to the Gospel imperatives. The classic example of such an imperative can be seen in the parable of the Good Samaritan (Luke 10:29–37). In defining who is one’s neighbor (whom we are to love as we love ourselves), Jesus tells a young legal scholar the story of the compassionate Samaritan who, unlike a priest and a Levite, stopped and ministered to a man who was beaten and robbed along the road to Jericho. The Samaritans were despised by the Jews. Jesus asks, “Which of these three, in your opinion, was neighbor to the robbers’ victim?” The scholar answers, “The one who treated him with mercy,” and Jesus tells him to “go and do likewise” (NAB).

Church ministries over the centuries have answered this call. The Christian woman Fabiola, who established a hospital in Rome around the year 390, was an earliest forerunner of today’s nurse.<sup>2</sup> Her decision to dedicate her wealth and her life to the care of the sick poor was grounded in her Christian faith. St. Benedict founded the Benedictine order, based

---

<sup>2</sup> *Catholic Encyclopedia*, s.v. “Fabiola, Saint” (vol. V, 1909), <http://www.newadvent.org/cathen/05743a.htm>.

on the Christian ethic, around the year 500.<sup>3</sup> The very names of the oldest foundations of health care, which continue to exist today—including the Hotel-Dieu in Paris, founded in 660—reflect the religious tradition of health care delivery.<sup>4</sup> A structure for the delivery of nursing care was created by the Christian religious order the Hospitallers of Saint John of Jerusalem in 1113.<sup>5</sup> This is historically considered to be the first organized structure for the delivery of health care.

In the United States this trend has continued. The first identified nurse in the territory that was to become the United States was Catholic friar Juan de Mena, from Santo Domingo of Mexico. He arrived on the shores of the southern Texas coast in 1554. The friar was known for his humility and his charity toward the sick.<sup>6</sup> The second oldest public hospital in continuous existence in the United States, Charity Hospital in New Orleans (1736), despite being a public hospital, was under the administration of the Daughters of Charity from 1834 to 1970.<sup>7</sup> The oldest hospital west of the Mississippi was established in St. Louis, Missouri, in 1828 by St. Elizabeth Seton's Sisters of Charity.<sup>8</sup> In continuity with these centuries of initiatives to apply the Gospel imperatives in the service of neighbor, Catholic health care is today the largest provider of non-

---

<sup>3</sup> For more information on St. Benedict, see *Catholic Encyclopedia*, s.v. "Benedict of Nursia, Saint" (vol. II, 1907), <http://www.newadvent.org/cathen/02467b.htm>.

<sup>4</sup> *Classic Encyclopedia*, s.v. "Hotel Dieu," <http://www.1911encyclopedia.org/Hotel-Dieu>.

<sup>5</sup> *Catholic Encyclopedia*, s.v. "Hospitallers of St. John of Jerusalem" (1907), <http://www.newadvent.org/cathen/07477a.htm>.

<sup>6</sup> David McDonald and J. Barto Arnold, III, *Documentary Sources for the Wreck of the New Spain Fleet of 1554* (Austin TX: Texas Antiquities Committee, 1979), no. 8, p. 235.

<sup>7</sup> "The Beginnings of Charity Hospital," LSU Health Care Services Division Web site, <http://www.mclno.org/MCLNO/Menu/Hospital/History/CharitysBeginnings.aspx>.

<sup>8</sup> Grace L. Deloughery, *History and Trends of Professional Nursing*, 8th ed. (St. Louis MO: Mosby, 1977), p. 68.

governmental, non-profit health care in the United States. With this stunning history of health-care ministry in the Catholic tradition, it is disingenuous to identify Catholic health care as a secular function of society. Yet, state by state, there have been legislative initiatives to define Catholic health care ministries, as well as Catholic social services, as secular endeavors, not protected by the free exercise clause of the First Amendment of the United States Constitution.

#### THE SECULAR REDEFINITION OF CATHOLIC MINISTRIES

The escalation of legislated health-care mandates demonstrates this trend to secularize Catholic health-care and social service ministries. The majority of states mandate that contraceptive coverage, including prescription drugs and devices, be included in employee insurance plans that offer prescription coverage. Of these mandating states, few provide a true religious or conscience exemption. Increasingly states are mandating the administration of emergency contraception in emergency departments to victims of sexual assault, even when there is an indication that the medication could function as an abortifacient. Only in rare cases are states providing conscience exemptions for the health-care agency. Pharmacists have been more successful in securing refusal provisions that protect them from having to violate their consciences in the dispensing of emergency contraception. However, increasingly they have had to seek court injunctions to protect their rights of conscience.

Of significant concern is the redefinition, in statutes or through the courts, of a religious employer. Arizona, Arkansas, California, Hawaii, New York, North Carolina, and Oregon are examples of states that have narrowly defined a religious employer to include only non-profit agencies (which would include Church ministries) that serve or employ primarily members of their own faith (which would thus not include the majority of Church ministries). Here rests the example of a revisionist's view of the role of religion in society and the protections that should be provided to religious entities.

To define a religious employer as primarily hiring or serving its own members is the antithesis of the historical role of a religious ministry.

Such entities are not created to be self-serving and self-employing, but to care mercifully for those in need, regardless of their religion, ethnicity, gender, social status, vocational or marital status, or ability to pay. History supports the claim that this has regularly been the purpose of the Church's social ministries. Furthermore, the Church's hiring practices are based on the ministry being provided. In a Catholic school, where beliefs are imparted to the next generation, teachers of certain disciplines may be required to be Catholic. For the majority of ministries, however, competence in the type of service being provided and a willingness to adhere to the mission of the ministry are the usual criteria for employment. Finally, there are no client eligibility conditions (such as conversion to the Catholic faith) applied to recipients of the Church's ministries. However, states such as New York and California require that to be considered a religious employer one must have as a purpose the inculcation of religious values. It would be very interesting to see the response of state legislatures if Church ministries attempted to apply the very criteria that these legislatures have stated as defining a religious ministry: that is, what would happen if a diocesan Catholic Charities agency or a Catholic hospital were to hire only Catholic workers and to serve only Catholic clients/patients, or only those willing to be evangelized in the faith?

Not only have state legislatures redefined Church ministries, but so have the courts. In 2006 the New York State Court of Appeals, by a unanimous vote, upheld two lower court decisions requiring the Church to include contraceptive drugs and devices (including abortifacients) in their employee prescription drug plans. Religious or faith-based ministries may be exempted only if they evangelize and if they employ and provide services primarily to their own members. Thus, while employers of Catholic schools and chanceries may be exempted, most other ministries, including Catholic social services and Catholic health care, may not be. In the decision, it was evident that what was viewed as the need to remedy a bias against women took precedence over the rights of people of faith. In considering the constitutionality of the narrow legal definition of a "religious employer," the justices acknowledged the reasoning of the New York legislature: "Those favoring a narrower exemption asserted that the broader one would deprive tens of thousands of women employed by

church-affiliated organizations of contraceptive coverage. Their view prevailed.”<sup>9</sup> In other words, the pro-contraception/pro-abortion agenda prevailed over religious freedom. This agenda was supported by the New York State Court of Appeals: “Finally, we must weigh against plaintiffs’ interest in adhering to the tenets of their faith the State’s substantial interest in fostering equality between the sexes, and in providing women with better health care.”<sup>10</sup>

A similar bias was demonstrated by the Supreme Court of California. This court concluded that the California legislature did not violate the “free exercise [of religion] clause” of the California Constitution when mandating that Catholic Charities of Sacramento include contraceptive drugs and devices in its employee prescription coverage plan. The justices found that it is within the legislature’s competence to identify subtle forms of gender discrimination, by which they referenced discrimination based on pregnancy, childbirth, or related medical conditions: “Certainly the interest in eradicating gender discrimination is compelling. We long ago concluded that discrimination based on gender violates the equal protection clause of the California Constitution...and...triggers the highest level of scrutiny.”<sup>11</sup> Again, the pro-contraception/pro-abortion agenda prevailed over religious freedom.

#### EFFORTS TO RESTRICT FREE SPEECH AND RELIGIOUS LIBERTY

The Church, as the Body of Christ, is composed of members whose rights to religious liberty and free speech also are being compromised. Increasingly, health care workers of conscience have been subject to penalties for refusing to engage in morally illicit acts. Toni Lemly, a Christian nurse at

---

<sup>9</sup> *Catholic Charities of the Diocese of Albany v. Gregory V. Serio*, New York Court of Appeals, no. 110 (October 19, 2006), 4, <http://www.nycourts.gov/ctapps/decisions/oct06/110opn06.pdf>.

<sup>10</sup> *Ibid.*, 16.

<sup>11</sup> *Catholic Charities of Sacramento v. Superior Court (Dept. of Managed Care)*, Supreme Court of California, no. S099822 (March 1, 2004), 41–42, <http://caselaw.lp.findlaw.com/data2/californiastatecases/s099822.pdf>.

St. Tammany Parish Hospital (Louisiana), was terminated from her full-time position for refusing to administer the “morning after pill,” which has the potential of being an abortifacient. The court case on this matter is pending.<sup>12</sup>

Similarly, mandates concerning the recognition of same-sex relationships are burgeoning. Such mandates not only exist for Catholic ministries (e.g., in California recipients of large state contracts must give employee-partner benefits, and this potentially will have an impact on Catholic Charities),<sup>13</sup> but they also exist for individuals. In Vermont, justices of the peace can be subject to penalties for refusing to officiate at a civil union.<sup>14</sup>

Increasingly the exercise of free speech of those advocating for the protection of the unborn is being eroded. The federal Freedom of Access to Clinic Entrances Act of 1994 established criminal and civil penalties for what is construed as violent, threatening, obstructive, and destructive conduct that is viewed as intended to injure, intimidate, or interfere with persons seeking to obtain or provide “reproductive health services.” Those engaged in prayer and side-walk counseling potentially could receive up to ten years in prison, as well as up to \$250,000 in fines (not including civil law suits) for such activities. Unfortunately, the U.S. Supreme Court upheld this law in 2001.<sup>15</sup> Similar laws continue to be promulgated at the state level. At the time of this paper fifteen states, plus the District of Columbia, have promulgated state clinic-access “protection” laws. More

---

<sup>12</sup> *Louisiana Eastern District Court, Lemly v. St. Tammany Parish Hospital*, [http://dockets.justia.com/docket/court-laedce/case\\_no-2:2007cv00529/case\\_id-112198/](http://dockets.justia.com/docket/court-laedce/case_no-2:2007cv00529/case_id-112198/).

<sup>13</sup> California Assembly, Assembly Bill 17, signed into law 10 October 2003, [http://www.assembly.ca.gov/LGBT\\_Caucus/laws/2003/ab0017/fulltextchapteredbill.htm](http://www.assembly.ca.gov/LGBT_Caucus/laws/2003/ab0017/fulltextchapteredbill.htm).

<sup>14</sup> Susan Price-Livingston, “Vermont Civil Union Law—Town Clerk Penalties,” <http://www.cga.ct.gov/2002/olrdata/jud/rpt/2002-R-0216.htm>.

<sup>15</sup> About.Com: US Government Info, “Court Upholds Abortion Clinic Access Law,” <http://usgovinfo.about.com/library/weekly/aa041601a.htm>.

intimidating provisions have been developed through Racketeer Influenced and Corrupt Organizations Acts (RICO). Connecticut General Statutes §§52-571a and 53-37b were designed to protect clinic access. They impose criminal and civil penalties for the force or the “threat” of force to deprive a person of equal protection of state and federal laws or of equal privileges and immunities under state and federal law. These provisions are written broadly and have been used to interfere with the efforts to encourage mothers not to have an abortion as they walk to abortion centers.

Another state-legislated attack on free speech and religious liberty is the legal designation of “buffer zones.” Unfortunately, the creation of such zones in which free speech is violated has been upheld by the U.S. Supreme Court. In *Madsen v. Women’s Health Center*<sup>16</sup> the Supreme Court upheld Florida restrictions on those attempting to protect the lives of the unborn at abortion centers. The law forbids protests within thirty-six feet of such centers as well as loud noises within their earshot. One could rightly ask, “What does that mean?” Fortunately, the Supreme Court rejected prohibitions against carrying/exhibiting images, peaceful picketing, and approaching a client within 300 feet of a clinic. In *Schenck v. Pro-Choice Network*<sup>17</sup> the U.S. Supreme Court struck down New York’s fifteen-foot “floating” buffer zone, but upheld the fifteen-foot fixed buffer zone from entrances and parking lots of abortion centers. Similarly, in *Hill v. Colorado*<sup>18</sup> the U.S. Supreme Court upheld prohibitions against approaching within eight feet a person who is within one hundred feet of a clinic access. Supreme Court Justice Anthony Scalia wrote a scathing dissent, against this majority opinion, based on the

---

<sup>16</sup> *Supreme Court of the United States, Judy Madsen et al. v. Women’s Health Center, Inc. et al.*, 512 U.S. 753 (June 30, 1994).

<sup>17</sup> *Supreme Court of the United States, Paul Schenck and Dwight Saunders, Petitioners v. Pro Choice Network of Western New York, et al.*, 519 U.S. 357 (1997).

<sup>18</sup> *Supreme Court of the United States, Hill, et al. v. Colorado et al.*, 530 U.S. 703 (2000).



violation of free speech.

There has been some good news pertaining to the protection of free speech and religious liberty. In a unanimous decision in *Joseph Scheidler et al. v. National Organization for Women, Inc. et al.*,<sup>19</sup> the Supreme Court, after being presented with this case three times over twenty years of litigation, overturned a 7th Circuit Court RICO finding against pro-life advocates. In this case the National Organization for Women initially had won a suit against Joseph Scheidler and other pro-life advocates and organizations within the Pro-Life Action Network, charging that their actions constituted racketeering. It is ironic that efforts to protect the most vulnerable human beings, including not only the unborn but also pregnant women from the violence of abortion, can be legally construed as an activity of organized crime. The evidence is mounting that laws to protect religious liberty and free speech have been turned against persons of faith.

#### ERODING LEGAL PROTECTIONS

The First Amendment of the U.S. Constitution states that Congress will make no law respecting a religious establishment. However, it immediately follows with a prohibition against violations of the free exercise of religion. These provisions have been described as the separation of church and state. However, no other concept of constitutional protections has been more misunderstood or misused by those with their own political agendas. The constitutional scholar Stephen Carter addresses this misperception: “For the most significant aspect of the separation of church and state is not, as some seem to think, the shielding of the secular world from too strong a religious influence; the principal task of the separation of church and state is to secure religious freedom.”<sup>20</sup>

Clearly, there has been a redefinition by the courts of the meaning of the First Amendment since its adoption in 1791. The mandate for

---

<sup>19</sup> *Supreme Court of the United States, Joseph Scheidler et al. v. National Organization for Women, Inc. et al.*, 537 U.S. 393, 4 (2003).

<sup>20</sup> Stephen L. Carter, *The Culture of Disbelief: How American Law and Politics Trivialize Religious Devotion* (New York NY: Basic Books, 1993), p. 107.

demonstrating a prevailing state interest before passing a law that infringes on a religious freedom has been marginalized. When religious freedom and “reproductive rights” conflict, the balance tragically shifts to the detriment of religious freedom. This shift against religious freedom was codified by the Supreme Court. In the *Oregon v. Smith* decision in 1990, public employees who smoked peyote as part of a religious ritual were held to not be protected by the free exercise clause of the First Amendment.<sup>21</sup> The impact of the decision is that the state has no obligation to demonstrate a prevailing state interest if a legal mandate or prohibition is applied to all persons. This negates the very purpose of the free exercise of religion clause. As Carter states, “If the state bears no special burden to justify its infringement on religious practice, as long as the challenged statute is a neutral one, then the only protection a religious group receives is against legislation directed at that group. But legislation directed at a particular religious group, even in the absence of the free exercise clause, presumably would be prohibited by the equal protection clause.”<sup>22</sup>

In response to the *Oregon v. Smith* decision, advocates for religious freedom succeeded in securing passage of the federal Religious Freedom Restoration Act (RFRA) of 1993. This legislation prohibited the government from limiting religious freedom in the absence of a compelling government interest, and even then the limitation had to be the least restrictive. In 1997, however, in the decision *Boerne v. Flores*, the Supreme Court overturned the law on the basis that it interfered with states’ rights.<sup>23</sup>

---

<sup>21</sup> *Employment Division, Dept. of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990), <http://laws.findlaw.com/us/494/872.html>.

<sup>22</sup> Carter, *Culture of Disbelief*, p. 127.

<sup>23</sup> *City of Boerne v. Flores, Archbishop of San Antonio*, 521 U.S. 507 (1997), <http://laws.findlaw.com/us/521/507.html>. Interestingly, this case involved the Archdiocese of San Antonio, which challenged a town historic property ordinance that prevented the archdiocese from demolishing part of a church in Boerne, Texas. The challenge was based on the federal Religious Freedom Restoration Act of 1993, which this decision overturned.

In his analysis of the changing perception of the First Amendment, Carter cites the legal scholar Harold Berman, who asserts that contemporary thinking on the First Amendment is sharply discontinuous with that of the Founding Fathers. Berman further asserts that the establishment clause of the First Amendment should be understood to allow “government support of theistic and deistic belief systems more nearly comparable to the government support which is permitted to be given to agnostic and atheist belief systems.”<sup>24</sup> While Berman’s analysis addresses government support for faith-based endeavors, he identifies a phenomenon that some would consider to be a bias against religions by the very state(s) charged with protecting religious rights. Clearly, recent actions of legislatures and the courts have demonstrated this phenomenon. To fail in vigorously opposing such actions can have long-term and catastrophic implications for people of faith. Carter forecasts: “The potential transformation of the Establishment Clause from a guardian of religious freedom into a guarantor of public secularism raises prospects at once dismal and dreadful.”<sup>25</sup> All one has to do is analyze the burgeoning list of mandates against religious freedom to understand the proportions of this very real threat.<sup>26</sup>

GOODS TO BE PROTECTED AND EVILS TO BE AVOIDED

Mandating contraceptive coverage within Church employee-benefit plans, as well as mandating the administration of emergency contraception even when it has the potential to function as an abortifacient, present serious moral conundrums for the Church. Analyses of these conundrums have centered on proportionality of evil to good. There is no question that the use of contraceptives, even by married couples, is gravely and intrinsically

---

<sup>24</sup> Harold J. Berman, “The Religious Clauses of the First Amendment in Historical Perspective” in *Religion and Politics*, ed. W. Laswon Taitte (Dallas TX: Univ. of Texas Press, 1989), p. 72, cited in Carter, *Culture of Disbelief*, pp. 119-20.

<sup>25</sup> Carter, *Culture of Disbelief*, pp. 122-23.

<sup>26</sup> See updated “Table of Legal Mandates State by State” available at [www.ncbcenter.org](http://www.ncbcenter.org).

evil. As Pope Paul VI states, “it is a serious error to think that a whole married life of otherwise normal relations can justify sexual intercourse which is deliberately contraceptive and so intrinsically wrong.”<sup>27</sup> The *Catechism of the Catholic Church* states that contraception, even to regulate births, is morally unacceptable: “The regulation of births represents one of the aspects of responsible fatherhood and motherhood. Legitimate intentions on the part of the spouses do not justify recourse to morally unacceptable means (for example, direct sterilization or contraception).”<sup>28</sup> This grave nature of the matter is compounded by the fact that almost all state contraceptive mandates include insurance coverage for “devices” such as intrauterine abortifacient devices. There also is the potential for emergency contraception to function as an abortifacient. Abortion is one of the most serious violations of the law. “A person who procures a completed abortion incurs a *latae sententiae* excommunication” (c. 1398).<sup>29</sup> A *latae sententiae* penalty is one that is incurred *ipso facto* when the specific external violation of the law is committed (c. 1314). Abortion includes the destruction of the embryo or fetus any time after conception (fertilization).<sup>30</sup> The *Ethical and Religious Directives for Catholic Health Care Services* are consistent with this interpretation of the meaning of abortion. Directive #36 states, in part: “It is not permissible, however, to initiate or to recommend treatments that have as their purpose or direct effect the removal, destruction, or interference with the implantation of a fertilized ovum.”<sup>31</sup> Therefore, initiating or recommending the use

---

<sup>27</sup> Pope Paul VI, *Humanae vitae* (July 25, 1968) §14.

<sup>28</sup> U.S. Conference of Catholic Bishops, *Catechism of the Catholic Church*, 2nd ed. (Washington, D.C.: USCCB, 1997) §2399.

<sup>29</sup> Canon Law Society of America, *Code of Canon Law: Latin-English Edition, New English Translation* (Washington, D.C.: CLSA, 1999). Subsequent citations of canons are from this source.

<sup>30</sup> Pontifical Council for Legislative Texts, *Interpretationes Authenticae* (c. 1398), *AAS* 80 (1988): 1818.

<sup>31</sup> U.S. Conference of Catholic Bishops, *Ethical and Religious Directives for Catholic Health Care Services*, 4th ed. (Washington, D.C.: USCCB, 2001) #36.

of abortifacient drugs or devices is also prohibited. The question is whether the Church and people of good will can acquiesce to this pressure under the misnomer of “the greater good.”

There is a risk in refusing to comply with the legislative mandates (that is, in refusing to be complicit with evil) of losing one’s right to engage in the social and health-care ministries as individuals and as a church. Increasingly, one hears that if individual social service or health-care providers, or the Church as an institution, do not want to engage in activities that violate their consciences or religious tenets, they should not be engaged in these services. This is the mentality that led to the Nuremberg trials.<sup>32</sup> Furthermore, refusing to speak the truth about the violence of abortion at abortion centers out of fear of being victims to state sanctions fosters an environment akin to a police state.

#### TENABLE RESPONSES

There is the real concern that if the Church responds to the only morally tenable option in the face of contraceptive mandates—given the rulings in New York and California, for example—it would have to discontinue all prescription-benefit coverage for employees. However, providing coverage for contraceptives and abortifacients may, in canonical terms, cause representatives of the Church to commit gravely imputable acts by formally cooperating with evil. Furthermore, not allowing persons of conscience to enter into social service or health-care professions creates a state in which whatever is legal becomes moral, which history has shown leads to a panoply of human rights’ abuses. Not allowing persons of conscience publicly to object to the violence of abortion by labeling such actions as “racketeering” violates the right to free speech. And it will not end there. Ever-increasing threats exist, such as mandated assisted suicide and the labeling of advocacy for the protection of marriage as “hate speech.” The interesting point is that this current state of affairs was

---

<sup>32</sup> For more information on the Nuremberg Trials, see Harvard Law School Library, *Nuremberg Trials Project: A Digital Document Collection* (2003), [http://nuremberg.law.harvard.edu/php/docs\\_swi.php?DI=1&text=overview](http://nuremberg.law.harvard.edu/php/docs_swi.php?DI=1&text=overview).

*Life and Learning XVII*

predicted by Pope Paul VI in 1968:

Who will prevent public authorities from favoring those contraceptive methods which they consider more effective? Should they regard this as necessary, they may even impose their use on everyone. It could well happen, therefore, that when people, either individually or in family or social life, experience the inherent difficulties of the divine law and are determined to avoid them, they may give into the hands of public authorities the power to intervene in the most personal and intimate responsibility of husband and wife.<sup>33</sup>

What has been done to reverse this trend? Ever since the U.S. Supreme Court declared the federal Religious Freedom Restoration Act of 1993 unconstitutional, efforts to remedy this in Congress have been stalled. In 2000, Congress passed a limited version of a RFRA, the Religious Land Use and Institutional Persons Act. This legislation restricts government intrusion into the use of religious land and protects religious freedom of institutionalized persons. The final recourse to redress the contraceptive mandate laws and rulings of New York and California was the Supreme Court. However, in October of 2004 the U.S. Supreme Court refused to hear the challenge to the decision of the Supreme Court of California requiring the Church to include contraceptive drugs and devices (including abortifacients) within their employee prescription-drug plans. In October of 2007 the U.S. Supreme Court refused to hear an appeal of a similar decision of the New York State Court of Appeals. The First Amendment rights of religious liberty and free speech thus are being eroded. The history of Catholic social services and health-care is being rewritten by legislatures and courts, who are denying the ministerial nature that is its foundation. The essential meaning of religion is being redefined in a way that threatens to deny its very essence.

Now is the time to act: to use every legal means to refuse to comply, so that no further harm can be done to the ministries of the Church, its members and employees, and the future of religious freedom. It may mean that the Church refuses to engage in ministries as the state has defined

---

<sup>33</sup> Pope Paul VI, *Humanae vitae* §17 (July 25, 1968), *AAS* 60 (1968): 489-96.

*Marie Hilliard*

them. Then, the very secular society that depends on the services of the Church, which is the largest provider of non-governmental, non-profit health care, social services, human services, and education in the United States, will be responsible for the outcome. For the Church not to act will fulfill, further, the prophesies of Pope Paul VI as well as those of Professor Carter: “The potential transformation of the Establishment Clause from a guardian of religious freedom into a guarantor of public secularism raises prospects at once dismal and dreadful.”<sup>34</sup>

---

<sup>34</sup> Carter, pp. 122-23.