

# Guess Who's Taking These Nuns to Court

The Obama administration's lack of understanding of the spiritual depth and commitment of private religious charities is shocking. The callousness of the federal effort to compel a noble Catholic religious order—the Little Sisters of the Poor—to forsake its faith commitments shows the depth of the intolerance of the behemoth secular state under President Obama.

The story is one of courageousness on the part of the nuns of this religious order. Founded in France in 1839, the Little Sisters of the Poor has spread to many other countries, including the United States, with the charitable goal of giving aid and comfort to the poor. The Sisters take the normal vows of poverty, chastity, and obedience, but also add hospitality, which they extend to some of the “least of those in our midst.”

In March, the nuns will continue their long battle against the federal Department of Health and Human Services (HHS) and its head, Sylvia Burwell, when the Sisters and their lawyers come before the Supreme Court.

The case concerns the long reach of the Affordable Care Act (i.e., Obamacare) and its unyielding interpretation by HHS that threatens to place the Little Sisters of the Poor in a moral dilemma. HHS is requiring the Sisters and other religious institutions such as sectarian colleges, seminaries, and faith-based charities, to provide contraceptives—including abortion-inducing drugs (i.e., abortifacients)—in the health plans they offer to their employees. The Little Sisters and other religious entities are refusing to comply, even though non-compliance will mean huge and potentially destructive fines imposed by the federal government. This is the same

moral choice that was imposed on private for-profit corporations in 2014, which resulted in the Hobby Lobby case. There, two firms—Hobby Lobby and Conestoga Wood Specialties—successfully challenged the contraceptive mandate imposed by HHS and the Affordable Care Act by making use of the provisions of the Religious Freedom Restoration Act.

In a calculated retreat, HHS claims that it has provided a “way out” for the Little Sisters. But is this a sleight-of-hand trick telling the nuns that they can avoid the moral issue? HHS and the Obama administration may be used to trying to make moral issues appear inconsequential in order to achieve their secular goal of opening wide the pathway to abortions, but the Little Sisters know complicity in wrongdoing when they see it. Here are the specifics:

HHS now offers to have the Sisters sign a form saying that they have religious objections to providing the contraceptive choices to their employees. This then has the effect of shifting the provision of contraceptives to either the health insurance company or to a third party that administers the health plan. Either way, the contraceptives are provided through the Little Sisters’ plan. The Sisters say that what HHS is proposing is a distinction without a moral difference. As they argue in their brief: “In short, it [the HHS proposal] is designed to force a religious employer to allow its own plan to be used to facilitate access to the very contraceptive coverage that it finds religiously objectionable.”

The provisions of the Religious Freedom Restoration Act are clear. The complaining party must show that a regulation imposed by the federal government “substantially burdens its free exercise of religion.” The Little Sisters of the Poor face ruinous fines in the millions of dollars if they refuse to comply. That is a substantial burden. The government is then obliged to show that it nevertheless has a “compelling interest” in enforcing the requirement, and it must satisfy

the court that it has “no less burdensome way” of accomplishing its regulatory end.

The difficulty the federal government faces here is that it has exempted many others, including churches and their religious auxiliaries, “grandfathered plans,” and small employers, which clearly demonstrates that the requirement is not so compelling that no exemptions can be granted. In addition, HHS could extend the general exemptions it already offers to other religious entities to the Little Sisters, which would be the least restrictive means of meeting the requirement. Under the Hobby Lobby case, the court also suggested that the government itself could offer to assume the costs of the contraceptives sought by exempted employees without implicating the religious employer.

This is a case where Big Brother simply refuses to recognize the deeply held religious views of private charities whose work with the poor and downtrodden is activated by the example of Christ himself. Here is a simple message the Supreme Court should send to Burwell, President Obama, and HHS: Let the Little Sisters continue to serve the poor and vulnerable. Leave them alone.

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