

Preserving Religious Freedom

By Ron Johnson, Executive Director
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Religious freedom is one of the most important concepts upon which the United States of America was formed. In fact, matters of conscience and religious freedom help form the cornerstone of many of our country's most important constitutional guarantees and civil liberties. Despite this noble tradition of respecting our many faiths, however, recent times have witnessed several attempts to undermine religion, even to the point of forcing religious organizations to violate the tenets of their faith.

One of the most significant legislative attacks on religious freedom came in 2002 when the Arizona Legislature passed into law a bill requiring all employers who provide prescription insurance coverage to their employees to also include prescription contraceptive coverage. This legislation included only a very limited exemption for certain "religious employers" when the use of contraceptives was against the tenets of their faith, but not for others.

The problem with this exemption is that the term "religious employer" is defined as an organization that primarily employs and serves only people that share the tenets of its faith. In other words, Catholic charities and other similar organizations are now being forced under Arizona law to violate the tenets of their faith because they serve the entire community and do not discriminate among recipients of their services.

Recognizing the aforementioned problem, the Legislature passed SB 1089 this Session to provide protection to all non-profit religious organizations who have a religious tenet against contraception. Because of the Governor's recent veto, however, the problems from last year's "mandatory contraception" legislation remain in law.

The Catholic Church has a long and proud tradition of serving those most in need. For centuries, Catholic organizations have provided services to the disadvantaged, including the homeless, elderly, AIDS victims, immigrants and unwed mothers, to name only a few. These services are an important part of the Catholic faith tradition, and have made our country and state a better place to live. It is unfortunate, therefore, that despite these impressive contributions, the State of Arizona is now forcing these Catholic organizations to either stop serving the community at large or violate the tenets of their faith with respect to contraception.

Similar "mandatory contraception" legislation has also been passed in the States of New York and California where litigation subsequently ensued. In an effort to avoid a lawsuit in Arizona, the Arizona Catholic Conference carefully drafted legislation (SB1089) to narrowly expand the definition of "religious employer" to essentially allow non-profit religious organizations to be exempted from being forced to pay for prescription contraceptive coverage if doing so violated the tenets of their faith.

The practical effect of SB 1089 was simply to allow all religious organizations the ability to freely exercise their faith, in matters of contraception, regardless of the people they served or employed.

Contrary to the misinformation that often arose at the Legislature, the bill did not gut the existing statute. In fact, a sentence was added to the bill specifically stating that a private for profit business did not qualify as a "religious employer." For all practical purposes, SB1089 left 99.9% of the present "mandatory contraception" law in place while carefully protecting religious organizations' beliefs.

Article 20, Section 1 of the Arizona Constitution is very clear on matters of religious freedom. In fact, this constitutional provision states that "perfect toleration of religious sentiment shall be secured to every inhabitant of the State..." It is hard to believe that this provision would not apply to religious organizations impacted by the "mandatory contraception" legislation. SB1089, therefore, under both the Federal and State Constitutions seemed certain to further our constitutional tradition of accommodating individuals' and groups' free exercise of religion.

The constitutionality of the existing "mandatory contraception" statutes, meanwhile, is one that remains in doubt and likely will remain so until years of litigation work their way through the courts not only in New York and California, but also perhaps Arizona. Governor Hull recognized this fact last year when despite signing the "mandatory contraception" legislation stated that she was "troubled by the narrow exemption for religious organizations."

It is disappointing that Governor Janet Napolitano, by vetoing SB 1089, apparently is less troubled than her predecessor by the limited religious freedom provided in the existing "mandatory contraception" statutes. The Governor's veto message expresses concern for the employees of religious organizations and effectively asserts that the rights of non-Catholic or dissenting employees to have their birth control pills paid for by their religious employer is greater than the constitutional protections afforded to that religious organization. Following this logic, it is not even a leap to say that religious employers can also be forced to pay for abortions for their employees, even if it is against the organization's faith tenets.

The Governor's official website carries an interesting slogan under her picture that reads, "many lands, many people, many faiths, one Arizona." Presumably this slogan reflects a sincerely held core belief in tolerance and religious freedom with which we can all agree. Unfortunately, however, at least with respect to the veto of SB 1089, it does not appear that the Governor's action was consistent with this slogan.