

Religious exemption for employers expanded

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WASHINGTON—The Trump Administration expanded the exemption for employers who cite moral or religious objections to providing their employees insurance coverage for birth control—including drugs that may induce abortions.

Representatives of some religious groups, including the presidents of two Baptist General Convention of Texas-affiliated universities that had challenged the birth control mandate, praised the announcement.

Others expressed concern the rule changes and particularly a related Department of Justice memorandum dealing with multiple religious liberty issues will continue to spark controversy.

Birth-control mandate

The Health and Human Services mandate of the Affordable Care Act—also called Obamacare—required employers to provide employees all Food and Drug Administration-approved preventive birth-control methods, including emergency drugs commonly known as the “morning-after pill” and the “week-after pill.”

Medical experts hold different views about whether the drugs prevent fertilized eggs from implanting in the womb or whether they simply delay ovulation, but some religious groups see them as equivalent to abortion.

In 2014, the Supreme Court ruled the Affordable Care Act could not

require private corporations, such as the family-owned Hobby Lobby retailer, to offer insurance coverage for birth control methods they believed caused abortions.

The [new rule](#) expands that exemption to include other entities on the basis of religious beliefs, and a companion rule protects organizations and small businesses on the basis of moral convictions apart from religion.

Russell Moore, president of the Southern Baptist Convention's Ethics & Religious Liberty Commission, called the action "a crucial step in the preservation of religious liberty."

"The government has no business whatsoever forcing citizens to subsidize the destruction of human life and the exploitation of families and communities," Moore said in a written [statement to Baptist Press](#), news service of the SBC Executive Committee.

"More still, the contraceptive mandate revealed the audacity of a state that believed it could annex the human conscience, which is why I have long opposed it as an unlawful overreach asking citizens to choose between obedience to God and compliance with the regulatory state. A government that can pave over the conscience of some can steamroll over dissent everywhere."

Two Texas Baptist schools respond

Five years ago, Houston Baptist University and East Texas Baptist University [filed a lawsuit](#) challenging the birth control mandate, asserting it required them to provide "abortion-causing drugs."

The new HHS rule announced Oct. 6 is "a victory for common sense," said Eric Rassbach, deputy general counsel for Becket, the religious liberty law firm that represented HBU and ETBU.

A federal judge in Texas ruled in 2013 the mandate violated the schools' religious liberty rights, but the 5th U.S. Circuit Court of appeals [overturned](http://www.ca5.uscourts.gov/opinions/pub/14/14-10241-CV0.pdf) that decision in 2015. (<http://www.ca5.uscourts.gov/opinions/pub/14/14-10241-CV0.pdf>)

However, Becket officials noted the new HHS rule aligns with several Supreme Court decisions, including last year's ruling in [Zubik V. Burwell](#).

"We are glad the government has finally listened to the Supreme Court," HBU President Robert Sloan said. "Our missions has always been driven by our faith, and all we have ever wanted was to live out that faith in every aspect of what we do."

ETBU President Blair Blackburn likewise praised the new rule.

"We are thankful that HHS has seen the light and issued this new rule," Blackburn said. "Our goal is to provide excellent Christ-centered education while remaining true to our Baptist beliefs. This case is at the core about protecting the constitutionality of our institution's religious liberty to follow the tenets of our faith rooted in God's truths."

The Affordable Care Act exempted religious organizations such as churches from the mandate, but the exemption did not originally extend to faith-based institutions such as hospitals and universities that are open to the general public.

Later, the Obama Administration added a provision that allowed employees of such institutions and organizations to receive the mandated coverage through a third party insurance provider.

Some religious organizations—including [GuideStone Financial Services](#) of the Southern Baptist Convention—filed suits asserting a provision requiring them to let the government know in writing of their decision to opt out made them complicit in providing abortion-causing birth control methods.

GuideStone President O.S. Hawkins praised the new HHS rule as “good news for all Americans who value the importance of religious liberty in our nation.”

Attorney General memo causes concerns

In addition to the HHS rule changes, Attorney General Jeff Sessions also issued on Oct. 6 a [Department of Justice memorandum](#) regarding federal law protections for religious liberty.

The memo—which not only deals with the birth control mandate but a variety of religious liberty matters—likely will prompt further controversy, said Holly Hollman, general counsel for the [Baptist Joint Committee for Religious Liberty](#).

“In large part, the guidance restates much settled law, though with a decided tilt toward concerns of free exercise, giving short shrift to the government’s duty to avoid no-establishment concerns,” she said.

“In a couple of areas, the guidance will exacerbate controversy. The guidance treats complicated legal issues, such as the definition of ‘substantial burden’ on religious exercise and the interplay between religious autonomy and government funding, in an overly simplistic way.”

Barry Lynn, executive director of Americans United for Separation of Church and State, offered a pointed critique of the Sessions memo. He particularly singled out language that he insisted gives federal government workers the right to use their religious beliefs as a reason to discriminate against or deny services to certain people.

“Anyone who cares about civil rights, fairness and equality has to pay attention right now,” Lynn asserted. “Treating one faith or one group of

people as second-class citizens threatens the religious freedom that protects us all.

“Religious freedom doesn’t give anyone the right to use religion as an excuse to harm others. But today the Trump Administration is giving the Religious Right exactly what it wants. The guidance is a roadmap for how to discriminate against most anyone, including women, LGBTQ people and religious minorities.”