



April 3, 2023

BY ELECTRONIC SUBMISSION

Internal Revenue Service, Department of the Treasury;
Employee Benefits Security Administration, Department of Labor;
Centers for Medicare & Medicaid Services, Department of Health and Human Services.

Re: Request for Public Comment Concerning Proposed Rule on Coverage of Certain Preventive Services Under the Affordable Care Act; RIN 0938-AU94; 1210-AC13; CMS-9903-P

Dear Sir or Madam:

The Ethics & Religious Liberty Commission (ERLC) of the Southern Baptist Convention (SBC) respectfully submits the following comments regarding our concerns with the proposed rule “Coverage of Certain Preventive Services Under the Affordable Care Act.”

The ERLC is the public policy and ethics entity of the SBC, which has nearly 14 million members in over 50,000 churches and congregations in the United States. We are charged by the SBC with addressing public policy affecting such issues as religious liberty, marriage and family, the sanctity of human life, and human dignity.

The ERLC has been involved in HHS’s regulatory action on this matter for many years. Among other agency actions, the ERLC submitted comments on April 8, 2013, in response to HHS’s Notice of Proposed Rulemaking (NPRM) regarding Coverage of Certain Preventive Services under the Affordable Care Act and submitted comments to HHS’s NPRM on December 5, 2017, regarding Religious Exemptions and Accommodations for Coverage of Certain Preventive Services Under the Affordable Care Act.

This remains an issue of great concern for millions of Southern Baptists. Religious freedom, protection of consciences, and the right to life of every person are indispensable, bedrock values for Southern Baptists. The Constitution’s guarantee of freedom from governmental interference in matters of faith and conscience are crucial protections upon which SBC members and adherents of other faith traditions depend as they follow the dictates of their conscience in their daily lives. For Southern Baptists, adhering to their deeply held religious beliefs means protecting the inherent dignity of every human life, including the life of preborn children whose lives may be ended with the administration of drugs with abortifacient properties. Thus, the Departments’ rules



relating to the contraceptive mandate have been on the forefront of the ERLC's policy agenda since the Departments mandated coverage in 2011 — both as a matter of religious freedom and conscience protection. These concerns are grounded in our fundamental convictions regarding the dignity and protection of every human life, no matter what stage.

In the current NPRM, the Departments state that they seek to bolster access to birth control at no cost, because the “U.S. Supreme Court’s decision in *Dobbs* has placed a heightened importance on access to contraceptive services nationwide.” In citing the *Dobbs* decision as the primary reason for this action, the Departments implicitly acknowledge that the provision of certain contraceptives is inextricably tied to the issue of abortion and the act of taking a life. In recognition of that, the Departments should not impinge upon the deeply held religious beliefs or moral convictions of millions of Americans who hold to the same values regarding life as Southern Baptists. Such actions would be antithetical to our shared American values centered on the rights articulated in the Constitution and its amendments.

After reviewing the Departments’ NPRM, the ERLC encourages the Departments to maintain the proposed religious exemptions to the contraceptive mandate for religious organizations and religious employers.

The Departments “propose(s) to maintain the November 2018 final rules’ religious exemption for entities with sincerely held religious objection to providing coverage for contraceptive services,” as well as for objecting religious employers.

The ERLC commends HHS for providing a religious exemption to the preventive care mandate regarding contraception consistent with HHS’s obligations under the U.S. Constitution and RFRA. In particular, ERLC commends HHS for acknowledging that the original preventive care mandate and accommodation violated the RFRA rights of many entities.¹ ERLC also commends HHS for extending this exemption to the full range of entities, including churches, nonprofit organizations, and for-profit entities which may have religious objections. Americans with deeply held religious objections to abortion who were forced by their government to violate those beliefs by paying for products that caused abortions must have this exemption maintained. To do otherwise would transgress the consciences of millions of Americans.

¹ “Upon further examination of the relevant provisions of the Affordable Care Act and the administrative record on which the Mandate was based, the Departments have concluded that the application of the Mandate to entities with sincerely held religious objections to it does not serve a compelling governmental interest.” 82 Fed. Reg. at 47800



Although we support the religious exemptions proposed by the Departments, the ERLC is deeply concerned with the proposal to reject the conscience rights of non-religious employers who morally oppose providing life-ending contraceptives.

The “plain language of the statute [section 2713(a)(4) of the ACA] clearly allows the Departments to create ... *religious and moral exemptions*” to the contraceptive mandate.² Nonetheless, the Departments propose to eliminate the non-religious moral exemption from the regulations. In support of the proposal, the Departments argue that (a) a non-religious moral exemption is “not legally required,” (b) few entities make use of the moral exemption, and (c) non-religious objections “are outweighed by the strong public interest in making contraceptive coverage as accessible to women as possible.”

And yet, in 2018, the Departments themselves “concluded that it is appropriate to provide moral exemptions” from the contraceptive mandate. No significant developments have occurred in the interim that suggest a change is warranted, especially when the stakes — the trampling of citizen’s consciences — are so high.

For Southern Baptists, conscience protections are essential to our ability to freely exercise our religion and live out the most basic tenets of our faith. Our confession of faith, the *Baptist Faith & Message* clearly articulates our religious conviction that, “God alone is Lord of the conscience.”³ As Southern Baptist ethicist Dr. Andrew Walker has written, “For religion to be free, it must be authentic, and to be authentic, it must be unhindered from forces that would disrupt a person’s response to what his or her conscience identifies as true.”⁴ Conscience protections that do not extend to actual practice are meaningless. Rather, true protections allow citizens to live out their convictions in tangible ways without being forced by the government to act contrary to them.

Further, Southern Baptists do not believe these protections are just for religious people, but that conscience protections are critical for all people, regardless of their specific faith convictions. At the founding of our country, James Madison wrote, “Conscience is the most sacred of all property.” Regardless of the source of the conviction, whether religious or moral, the Constitution guarantees the protection of the conscience.

There is a robust history of Americans, both religious and non-religious, who have moral objections to the taking of a life. From pacifists opposing military service, to healthcare workers opposing assisted suicide, to feminists opposing abortion and some forms of contraceptives, the ability for an American to draw a line with

² *Little Sisters of the Poor v. Pennsylvania*, 140 S. Ct. 2367, 2382 (2020) (emphasis added), quoted in 88 Fed. Reg. at 7247.

³ *Baptist Faith & Message 2000*, Article XVII, <https://bfm.sbc.net/bfm2000/>

⁴ Walker, Andrew “Here we Stand: Southern Baptists and the HHS Mandate,”

<https://erlc.com/resource-library/articles/here-we-stand-southern-baptists-and-the-hhs-mandate--2/>



their own conscience about when they can participate in an action that may end a life, is fundamental. Freedom of conscience is a right all Americans enjoy, not just those of us whose consciences are bound by religious convictions.

Contraception will remain widely and readily available to those who seek it, but the right of all Americans to act upon their conscience to protect the lives of others, must be preserved and upheld at all costs. The proposed revisions to the coverage of contraceptives under the Affordable Care Act must continue to include exemptions for religious people but also must remain broad enough to include exemptions for people with moral objections as well.

Thank you for the opportunity to comment.

Respectfully submitted,

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Vice-President
Ethics & Religious Liberty Commission
of the Southern Baptist Convention