

Religious conscience in the scrap heap

Who Pays the Piper? Everyone

A biblical imperative,[1] the exercise of religious conscience is likewise a constitutionally protected, legal right. The second clause of the First Amendment guarantees free exercise of deeply held religious convictions.[2] Be sure principled religionists who exercise right of conscience are driven, not by superficial “feelings,” subject to changing winds. Nor is religious conscience to be confused with feeling guilt for indulging a second scoop of ice cream, or skipping a workout at the gym.[3] Conscience speaks to an internal witness to what God commands and forbids, or to what is legitimately deduced from explicit biblical principle.[4] This, our Founders protected.[5]

Since 1997 the First Amendment Center has conducted an annual national survey of American attitudes toward the First Amendment.[6] Sadly, nearly one-third of those surveyed in 2014 could not name even one of five rights guaranteed by the First Amendment.[7] While right to conscience matters little to the uninformed, principled pharmacists and pharmacy owners in Washington State treasure this right[8] not only for themselves, but also for all lawful Americans. Mindful that human life begins at the moment of fertilization, and that abortifacients operate by destroying a fertilized egg, or embryo, these professionals cannot in good conscience dispense Plan B or Ella.[9] Nor will they.

Arbitrary Stocking Rules

Rationally, pharmacies are not expected to stock every FDA-approved drug. In the industry, a repeat customer's prescription triggers the “stocking rule requirement,” but the

rule has no teeth and is never enforced. Moreover, the state establishes no stocking standards for low-demand drugs, nor are pharmacies required to stock diabetics' syringes, Schedules 2 and 5 nonprescription meds, or narcotics feared to invite armed robberies.

Clearly, the stocking rule allows ample wriggle room. For most, there's no quantitative formula of patient demand signaling need to stock a drug, nor are there rules for how long the pharmacy must carry a given drug, once demand for it wanes. In fact, niche pharmacies systematically limit drugs they stock to specified healthcare categories such as pediatrics, cancer, or long-term care.

While Washington offers no definition for "good faith compliance," Federal Appellate Judge Susan Graber (9th Circuit Court of Appeals) applies this overly permissive (and otherwise vague) rule sternly. In her world, pharmacies with religious objection must stock and dispense specific, time-sensitive abortifacients. For no particular reason, she exempts equally time-sensitive diabetic syringes.[10]

Arbitrary Referral Rules

A patient's need for timely delivery is met effectively by alternative, facilitated referral. For most, referral to nearby pharmacies is but a minor inconvenience.[11] If pharmacists can refer patients elsewhere when a drug is unprofitable, or out of stock, why not allow Plan B referrals to nearby pharmacies? It can't be emphasized enough that, with or without referrals, there's no documented access problem for Plan B in our state, nor any drug for that matter.

One, and only one, category of drug is under fire. Special interest activists demand immediate product and service from a targeted pharmacist with religious convictions against a specific drug's safe, ethical use. Strong-armed to forfeit right to conscience, career, or privately owned business, a

conscience-sensitive pharmacist is bullied to forgo his First Amendment right in deference to someone else's perceived, but nonexistent "right" to convenience.

What's more, whenever special interest politics shut down Christian businessmen and women—e.g., photographers, florists, caterers, bakers, and pharmacists—timely access to specific goods and services is limited all the more (at least in the short term). Jobs and services within the community are needlessly lost; and, over time, principled gynecologists, obstetricians, certificated master teachers, pharmacists, and more are forced out of their professions for refusing to be bullied out of their religious beliefs.

First Amendment Rights Scrapped

Deputy National Litigation Director for the Becket Fund for Religious Liberty, Luke Goodrich rightly argues, "No individual should be forced out of her profession solely because of her religious beliefs. For a pharmacist to maintain personally held, religiously motivated moral objections is fully within her constitutional rights; however, the United States Supreme Court recently declined to address a critical First Amendment rights case.[12]

Plaintiffs are Christian pharmacists and pharmacy owners being coerced to fill prescriptions to which they object on the basis of religious conscience. In this singular case, the standard practice of referral (unless within the same store) is deemed unacceptable. Washington state Attorney General Bob Ferguson lauds the high court's decision that, despite a pharmacist's moral convictions, or better judgment, a patient cannot be refused.[13] So what's to stop an activist from storming a church-affiliated senior care facility demanding Plan B? Must she be served—here and now, no excuses—even when said demand violates the pharmacist's conscience while, at the same time, it sidesteps the clientele's pharmacological needs? Think, people.

My Way or the Highway

Syndicated columnist Joel Mathis argues that pharmacists provide a highly regulated public service that cannot be denied.[14] Really? Everyday Washington pharmacies make choices about which of more than six thousand FDA-approved drugs they'll stock (or decline from stocking, as the case may be). Should a patient violate pharmacy dress- and/or behavior-codes—e.g., no shirt or shoes—or should he be identified as a known shoplifter, he need not be served. To the contrary, crows Mathis, “If you don't want to be a pharmacist who dispenses birth control, perhaps you shouldn't be a pharmacist.” Huh?

Goose v Gander Inequities [15]

What's good for the goose should be equally good for the gander, but secular pharmacists may do with impunity what religious pharmacists may not. Incredibly, pharmacists may refuse medications for all sorts of secular reasons—i.e., if a pharmacy doesn't accept a patient's insurance, Medicaid, or Medicare or if shelf space is limited and a medication has a short life. If it's exceptionally expensive (and the patient can't afford it)—or if stocking it requires additional, burdensome paperwork or unit dosages—no worries. When bulk purchase is necessary (beyond what the patient can consume), or if a drug requires monitoring or special preparation (e.g., compounding processes that require related equipment)—again, not to worry. No need to stock.

But an abortifacient is somehow different. The adequate, though not ideal compromise is for a pharmacist to “step away,” but not “in the way.” That policy no longer flies (in this one case only). A secular pharmacist may refer a client elsewhere for any number of reasons, but a pharmacist who objects on the basis of conscience may not.[16]

Conclusion

I am reminded of a prominent Protestant pastor, best remembered for this quotation as it reads in the United States Holocaust Museum:

First they came for the Socialists, and I did not speak out—Because I was not a Socialist.

Then they came for the Trade Unionists, and I did not speak out—Because I was not a Trade Unionist.

Then they came for the Jews, and I did not speak out—Because I was not a Jew.

Then they came for me—and there was no one left to speak for me.

To their credit, our Founders honored equal-handedness. As the Free Exercise Clause protects my right to conscience as a Christian, the Establishment Clause protects secularists from forced compliance to my religious convictions. Respecting the Supreme Court's recent *laissez-faire* decision,[17] Justice Samuel Alito warned, "If this is a sign of how religious liberty claims will be treated in the years ahead, those who value religious freedom have cause for great concern."

My rights as a believer are at stake, true; but so are yours as a secularist. For whatever reason, self-appointed elitists may come snarling and yapping at your heels next.[18] Whenever special interest politics prevail over one's constitutional right to "free exercise of religion," then all core rights (including speech, press, assembling, petitioning) are "up for grabs." Make no mistake. Everyone pays the piper.

Won't you please join me in prayerfully speaking out for protection of our inalienable, God-given rights?

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