
The Little Sisters' Win Reminds Us of What We've Lost

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Last week, the Supreme Court ruled in favor of the Little Sisters of the Poor, a Catholic religious order that operates homes for the elderly poor, in its latest battle to avoid what it deems to be immoral participation in the Affordable Care Act's contraceptive mandate. This decision has been celebrated by religious believers, but that the Little Sisters even had to [fight this battle in the first place](#) reflects the depth of the American civilizational crisis.

To simplify a complex factual and legal story: the Affordable Care Act of 2010 (ACA) tasked the Health Resources and Services Administration (HRSA) with coming up with guidelines for women's preventive health care, and the agency determined that health insurance plans must cover contraceptives. To accommodate religious employers that object to providing contraceptives through their health plan, the government allowed them to opt out by filing a form. The filing of this form triggered the provision of contraceptives to employees through an alternative means.

The Little Sisters and others argued that this was no accommodation at all because taking the affirmative step of filing a form directly caused contraceptives to be provided, thus violating their religious beliefs. The Little Sisters challenged the accommodation procedure under the Religious Freedom Restoration Act (RFRA). RFRA provides that a law that burdens the exercise of religion must serve "a compelling governmental interest" and be "the least restrictive means" of doing so.

The government responded to these objections by issuing a new administrative rule in October 2017 exempting from the contraceptive mandate any employer that objects to arranging for coverage of contraceptives on religious or moral grounds. Although the Supreme Court had not explicitly held in 2016 that the accommodation violated RFRA, the government took the RFRA-based objections into account when it formulated the new rule.

In response, the states of Pennsylvania and New Jersey sued the federal government, claiming that it violated the Administrative Procedures Act, which governs the procedures for issuing administrative rules. More significantly for our purposes, the states also argued that the federal government should not have considered RFRA in the new rule. The lower courts agreed with the states, which left the Little Sisters in legal peril, so they found themselves, yet again, appealing to the Supreme Court.

In last week's 7-2 [decision](#), the Supreme Court held that the government had followed the necessary procedures in issuing the exemption from the contraceptive mandate. The Court also explained that the government was correct to take RFRA into account when formulating the exemption. The justices acknowledged that the contraceptive mandate was capable of violating RFRA, and in a concurring opinion, Justice Alito [provided](#) an extensive legal analysis as to why that was so.

Critically, however, the majority did not rule on a claim that the states had pursued in the lower courts: whether the administration violated the law by creating a religious exemption to the contraceptive mandate that was so broad that it went beyond the bounds of what RFRA requires. Justice Kagan in a concurring opinion, and Justices Ginsberg and Sotomeyer in their dissent, argued that that is just what the government did. These opinions were essentially green lights to the states to renew their legal battle against the Little Sisters in the lower court, and indeed Pennsylvania's attorney general has already [vowed](#) to do so.

Was last week's decision a victory for the Little Sisters and for the free exercise of religion? Yes, but it's a victory that should not be celebrated without sober reflection on the American crisis that puts the Little Sisters in this position in the first place. And it points to the shortcomings of relying on the courts to preserve the freedom of religious institutions to advance their vision for society.

We should ask: why did the government create the contraceptive mandate in the first place? Why is it so intuitive to so many that the government should pay for contraception, and so intuitive, in fact, that not even the Trump administration has questioned it?

The reason is that the sexual revolutionaries of the 1960s have mostly succeeded in converting Americans from their traditional religious beliefs about sex and family to another vision entirely. In their apotheosis of pleasure and individual autonomy, the revolutionaries have succeeded in separating sex from its higher, God-ordained purpose: that of producing children. And mass access to contraception was a [key weapon](#) in that revolution.

To be sure, many women have sound medical reasons for seeking to prevent pregnancy, and such use is permitted within religions whose orthodoxy still adheres to traditional morality, such as [Catholicism](#), [Islam](#), and [Judaism](#). But the reality is that the [vast majority](#) of women use birth control to prevent pregnancy for non-medical reasons. If not for the paradigm shift wrought by the sexual revolution, the primary purpose of contraception would be beneficial and medical, rather than harmful and immoral. Under these circumstances, why should the Little Sisters be expected to pay for it?

The Little Sisters have been forced to engage in a seven-year battle for an exemption from a federal regulation that derives from somewhat ambiguous language in a law that only exists, indeed, that is only conceivable, because religious institutions have lost the struggle for the soul of America. The American order was [founded](#) on the truth that God is the "universal Sovereign," and it cannot endure in any recognizable form with this belief disappearing from the heart of the American people. The shrinking space that the Little Sisters are fighting for to carry out their public mission is all that remains of this fading order. Replacing it are the predilections of a state and a political class that denies the truth of the soul from behind a smokescreen of neutrality.

So we must thank the [attorneys](#) for the Little Sisters of the Poor for defending what remains of the America that the Founders knew. But it is not enough. Upon its founding, America inherited and preserved the civilizational substance of Athens and Jerusalem, just as it was crumbling in continental Europe, a substance consisting of revelation and reason. This substance is crumbling in America today. Court battles, legislation, and electoral politics are important, but they will not preserve it, so our hopes and resources should not be invested exclusively in them.

Religious people and religious institutions have the power to win back the hearts of the American people. And that includes the people of religions whose tenets we may reject in part, but which agree in meaningful ways with our own, and with the beliefs of the Founders, on the duties we owe to God and to one another. Only these people have the ability to rekindle this civilizational flame. And to do that we must rediscover what it means to magnify God as our sovereign Lord, and then call our own hearts, our families, and our neighbors to this truth. These, and not the courts, are the battlegrounds on which the Little Sisters' fight will ultimately be won or lost.

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