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OPINION MAIN STREET

When Nuns Fight Back

The ObamaCare bullies take the Little Sisters of the Poor to court yet again.



By William McGurn [Follow](#)

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A sign outside a retirement home run by the Little Sisters of the Poor in Washington, July 20, 2018. JIM LO SCALZO/EPA-EFE/REX/SHUTTE/EPA/SHUTTERSTOCK

After two defeats at the Supreme Court, you would think even the dullest lower-court judge would get the message: Stop messing with the Little Sisters of the Poor. But for 12 years state and federal authorities have dragged this religious community through the courts because they deem it essential that Catholic nuns be forced to provide contraceptives to their employees. In 2016 and 2020 the Supreme Court came down on the sisters' side: Enough already.

That should have been the end of it. But Pennsylvania and New Jersey won't take no for an answer. On Aug. 13, U.S. District Judge Wendy Beetlestone in Philadelphia obliged these plaintiff states by tossing the Trump administration rule that allowed the Little Sisters an exemption. The rule, she wrote, is "arbitrary and capricious."

Just in time for Christmas, the Becket Fund, which represented the sisters in their two previous Supreme Court victories, has appealed Judge Beetlestone's ruling to the Third U.S. Circuit Court of Appeals.

At issue is the federal contraception mandate, an ObamaCare regulation that requires health plans to provide free access to contraception as well as sterilization and some abortifacients. The Becket brief points out that "the federal agencies have 'virtually unbridled discretion' about what services to include in the contraceptive mandate and what exemptions to create," and argues that the Trump administration was fully within its power to write rules granting the Little Sisters a religious exemption. Perhaps most telling, Becket points out that "the States have not identified a single woman who would lose coverage" if the Supreme Court again sides with the sisters.

"These states give away free contraceptives like candy—the idea that they can't get by without roping in Catholic nuns is absurd and appalling," says Mark Rienzi, president of Becket and a law professor at Catholic University. "It's like needing pacifists to hand out guns."

It's hard to imagine Judge Beetlestone's ruling being upheld by this Supreme Court. The justices have already dealt with the contraceptive mandate and the Little Sisters twice, and this latest challenge seems designed to irritate them. For seeming unable to take a hint, Judge Beetlestone risks a rebuke.

The Little Sisters make unlikely villains. The congregation was founded in 1839, when a French woman named Jeanne Jugan carried a blind and paralyzed woman home and gave her a bed to sleep in. From that one selfless act, the Little Sisters have grown to serve the elderly poor in more than 30 countries—they run 20 homes in the U.S. alone—and consider it a privilege to care for the world's forgotten.

The religious exemption speaks to a direct line running from the Little Sisters' religious beliefs to their service. They render unto Caesar what is his—but no more. And when these extraordinary women joined their order, surely none could have imagined the U.S. government's saying the price of caring for the elderly poor would be to violate the faith that drove them to this service in the first place. Mr. Rienzi notes that if the Little Sisters lose, we all do. Because even those who believe in no religion at all have a stake in others' freedom to pursue their vocations and do good works.

"If the government ever gets the power to force the Little Sisters to cover contraceptives, we still won't get more contraceptives," says Mr. Rienzi. "We'll just

get fewer nursing homes, fewer jobs and fewer people cared for as the government drives people of conscience out of the public square.”

This litigation is another legacy of ObamaCare. Ever since its passage in 2010, it has been rooted in force and subsidies and litigation—and Congress may vote to expand those subsidies permanently. In this context a ruling like Judge Beetlestone’s was probably inevitable.

Maybe it will awaken a sleeping American public. Americans may not be as religious as they were 50 years ago, and a majority no doubt don’t share the Little Sisters’ objection to contraception. Even so, it isn’t clear the broader public agrees that American healthcare should involve forcing women who devote their lives to bringing comfort to the old and the aged to first bow to government orthodoxy.

The good news this Christmas season is that the secular overreach may inadvertently highlight the need for religious-liberty protections. The more the bring-them-to-heel crowd targets the Little Sisters, the more noticeable such extremism becomes.

“Think about it,” says Mr. Rienzi. “In this case the other side wants a religious exemption so narrow that even Jesus himself wouldn’t qualify.”

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