



Religious Exemptions for Mandatory Health Care Programs: A Legal Analysis

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February 4, 2010

Congressional Research Service

7-5700

www.crs.gov

RL34708

CRS Report for Congress
Prepared for Members and Committees of Congress

011173008

Summary

The 111th Congress has considered issues relating to health insurance for uninsured Americans (e.g., H.R. 3962, Affordable Health Care for America Act; Patient Protection and Affordable Care Act, amendment in the nature of a substitute to H.R. 3590), which has led to policy discussions of mandatory health care coverage. Additionally, the threat of bioterrorism has caused some to consider the possibility of introducing vaccination programs to prevent an outbreak of serious illnesses. Programs like health care coverage and vaccinations have the potential to violate certain religious beliefs and therefore may conflict with the First Amendment. In the continuing debate over issues for which mandatory health care programs might be solutions, questions have been raised about the constitutional issues relating to exemptions for health care programs.

For the purposes of this report, mandatory health care programs are those which require individuals to take some action relating to a health care policy objective. A variety of mandatory health care programs currently exists at the federal and state levels. Some programs are medical programs that require individuals to participate in a medical program, while some programs are financial programs that require individuals to pay for program costs. For example, all 50 states and the District of Columbia require children to be vaccinated for certain illnesses and diseases before entering school. At the federal level, the tax system requires individuals to pay taxes that fund Medicare to provide health care to elderly citizens. In some instances, mandatory health care programs include exemptions that allow qualified persons to opt out of the required action. Specifically, religious exemptions have been provided in a variety of mandatory health care programs, including state immunization laws and Medicare taxes. These religious exemptions permit individuals who object to the program based on religious beliefs to avoid compromising those beliefs.

This report will discuss the legal issues that arise in the context of religious exemptions for mandatory health care programs. It will discuss constitutional and statutory provisions relating to religious protection and how such laws have been applied in the medical context. The report will also briefly address examples of health care programs that have included religious exemptions. Finally, the report will analyze whether the U.S. Constitution requires religious exemptions for mandatory health care programs and whether, if not required, the Constitution allows religious exemptions for such programs.

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The 111th Congress has considered issues relating to the health insurance coverage for uninsured Americans, which has led to policy discussions of mandatory health care coverage.¹ Additionally, the threat of bioterrorism has caused some to consider the possibility of introducing vaccination programs to prevent an outbreak of serious illness. Programs like health care coverage and vaccinations have the potential to violate certain religious beliefs, which may conflict with the First Amendment. In the continuing debate over issues for which mandatory health care programs might be solutions, questions have been raised about the constitutional issues relating to exemptions for health care programs.

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Freedom of Religion in a Medical Context

General Constitutional and Statutory Protections of Religious Exercise

The First Amendment of the U.S. Constitution provides that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof....”² These clauses are known respectively as the Establishment Clause and the Free Exercise Clause. Although the U.S. Supreme Court had historically applied a heightened standard of review to government

¹ See, e.g., P.L. 111-3, 123 Stat. 8 (Feb. 4, 2009). See also Affordable Health Care for America Act, H.R. 3962, 111th Cong. (2009); Patient Protection and Affordable Care Act, amendment in the nature of a substitute to H.R. 3590, 111th Cong. (2009).

² U.S. Const. Amend. I. For discussion of the constitutional and statutory standards of review used in relation to the free exercise clause, see CRS Report RS22833, *The Law of Church and State: General Principles and Current Interpretations*, by Cynthia Brougher.

actions that allegedly interfered with a person's free exercise of religion,³ the Court reinterpreted that standard in 1990. Since then, the Court has held that the Free Exercise Clause never "relieve[s] an individual of the obligation to comply with a valid and neutral law of general applicability."⁴ Under this interpretation, the constitutional baseline of protection was lowered, meaning that laws that do not specifically target religion or do not allow for individualized assessments are not subject to heightened review under the Constitution.

Congress responded to the Court's holding by enacting the Religious Freedom Restoration Act (RFRA), which statutorily reinstated the standard of protection of heightened scrutiny for government actions interfering with a person's free exercise of religion.⁵ When RFRA was originally enacted, it applied to federal, state, and local government actions, but the Supreme Court later ruled that its application to state and local governments was unconstitutional under principles of federalism.⁶ RFRA provides that a statute or regulation of general applicability may lawfully burden a person's exercise of religion only if it (1) furthers a compelling governmental interest and (2) uses the least restrictive means to further that interest.⁷ This standard is sometimes referred to as strict scrutiny analysis. The Supreme Court has held that in order for the government to prohibit exemptions to generally applicable laws, the government must "demonstrate a compelling interest in uniform application of a particular program by offering evidence that granting the requested religious accommodations would seriously compromise its ability to administer the program."⁸

Specific Free Exercise Rights Relating to Medical Treatment

Some religious doctrines forbid medical treatment or specific medical procedures.⁹ Followers of these religions believe that receiving treatment would violate their First Amendment right to exercise their religion freely. This conflict raises the issue known as forced care—whether patients can be forced to receive medical care to which they otherwise would object on religious grounds. Legal issues of forced care typically arise in situations where patients lack the capacity to make an informed decision about whether or not to receive care. These situations often involve patients facing death if they do not receive treatment.¹⁰ For example, because some religions have specific teachings regarding matters of life and death, a patient may object to life-saving treatment on religious grounds. However, if that patient lacks the capacity to provide informed

³ See *Wisconsin v. Yoder*, 406 U.S. 205 (1972); *Sherbert v. Verner*, 374 U.S. 398 (1963).

⁴ *Employment Div., Oregon Dep't of Human Resources v. Smith*, 494 U.S. 872, 879 (1990).

⁵ P.L. 103-141, 103d Cong., 1st Sess. (November 16, 1993); 42 U.S.C. § 2000bb *et seq.*

⁶ *City of Boerne v. Flores*, 521 U.S. 407 (1997).

⁷ 42 U.S.C. § 2000bb-1(b). In some instances, RFRA may be preempted by another federal law. See S.Rept. 103-111, at 12-13 (1993) (stating that "nothing in this act shall be construed as affecting religious accommodation under title VII of the Civil Rights Act of 1964").

⁸ *Gonzales v. O Centro Espirita Beneficente Unaio Do Vegetal*, 546 U.S. 418, 435-437 (2006).

⁹ For example, two religious affiliations that often are involved in these types of cases are Jehovah's Witnesses and Christian Scientists. Jehovah's Witnesses believe that blood transfusions are prohibited by religious teachings. *Jehovah's Witnesses*, 7 *Encyclopedia of Religion* 4820 (Lindsay Jones, ed., 2nd ed.) (2005). Christian Scientists believe in the use of prayer, rather than medicine, to treat ailments. *Christian Science*, 1 *Encyclopedia of Politics and Religion* 141 (Robert Wuthnow, ed., 2nd ed.) (2006).

¹⁰ The so-called "right to die" is beyond the scope of this report. For legal analysis on individuals' rights to decide the manner of death, see CRS Report 97-244, *The "Right to Die": Constitutional and Statutory Analysis*, by Kenneth R. Thomas.

consent at the time that care would be provided, a doctor or hospital may not be willing to withhold care based on religious affiliation alone, without an informed discussion with the patient.

Federal and state courts have addressed these issues of forced care for patients with religious objections to medical care. Caselaw indicates a growing willingness of courts over the past several decades to recognize patients' religious objections to medical care, including life-saving treatments. In the 1960s, a federal court authorized a hospital to treat a patient with what would be an objectionable procedure under her religion.¹¹ The patient faced death without a blood transfusion, a procedure that her religion prohibited, but due to emergency circumstances, the hospital staff was unable to determine if the patient was making an informed decision when she refused the treatment. By the 1980s, courts were giving greater weight to patients' choices regarding care.¹² In later cases, courts concluded that competent adults with religious objections to procedures cannot be forced to receive care, with one court noting that courts should give "great deference to the individual's right to make decisions vitally affecting his private life according to his own conscience."¹³ It is important to note, however, that such deference to patients' objections to care may not be recognized in cases in which parents are claiming objections on behalf of a child.¹⁴

Examples of Religious Exemptions for Health Care Programs

State Mandatory Vaccination Programs

As a matter of public health, all 50 states and the District of Columbia have enacted laws requiring vaccination, particularly in the context of school immunization laws.¹⁵ These laws have been enacted under a rationale of preventing the spread of communicable and debilitating diseases. All but two states (Mississippi and West Virginia) have enacted religious exemptions for these vaccination programs. These exemptions allow students who have religious objections to the vaccinations, but would otherwise be required to be vaccinated, not to comply with the vaccination requirements.

These exemptions have raised constitutional questions related to free exercise rights, with many courts holding that exemptions are not required under the Free Exercise Clause. The U.S.

¹¹ *Application of the President and Directors of Georgetown College*, 331 F.2d 1000 (D.C. Cir. 1964).

¹² *See, e.g., Bartling v. Superior Court*, 163 Cal.App.3d 186 (Cal. Ct. App. 1984) ("patient's self-determination as to his own medical treatment ... must be paramount to the interests of the patient's hospital and doctors").

¹³ *Public Health Trust of Dade County v. Wons*, 541 So.2d 96 (Fla. 1989); *see also Norwood Hospital v. Munoz*, 409 Mass. 116 (1991).

¹⁴ In some cases when a child does not receive medical care based on the parents' religious objections, the parents may be held criminally or civilly liable for neglect or other related grounds. *See, e.g., Walker v. Superior Court*, 763 P.2d 852 (1988). *Cf. State v. Lockhart*, 664 P.2d 1059 (Okla. Crim. App. 1983). *See also Lundman v. McKown*, 530 N.W.2d 807 (Minn. Ct. App. 1995).

¹⁵ "State Vaccination Requirements," Centers for Disease Control and Prevention, *available at* <http://www.cdc.gov/vaccines/vac-gen/laws/state-reqs.htm>. For more information on vaccination laws, see CRS Report RS21414, *Mandatory Vaccinations: Precedent and Current Laws*, by Kathleen S. Swendiman.

Supreme Court has not ruled directly on the constitutionality of religious exemptions for these vaccination programs. However, the Court has addressed the conflict between public health policies and religious beliefs. Faced with such a conflict between the government's interest in protecting public health and individuals' interest in being free to exercise their religious beliefs, the Court has held in favor of public health concerns.¹⁶ The implication that public health concerns outweigh the right to exercise one's religion without interference has led some state supreme courts to hold that mandatory vaccination programs are not a violation of religious freedom.¹⁷

The exemptions have also been challenged under the Establishment Clause and Equal Protection Clause. Allowing an exemption based on religion might appear to be endorsing a religion in violation of the Establishment Clause. Exemptions that allow certain individuals to claim religious objections to a process required for others also may give the appearance of distinct treatment for those individuals who have religious objections in violation of equal protection doctrine. Under the First Amendment, a law cannot favor some individuals based on their religious beliefs.¹⁸ Allowing an exemption based on religion to a generally required practice may be construed as special treatment for religious adherents, particularly in cases in which the legal provisions limit the scope of the exemption to religious beliefs only (that is, excluding philosophical beliefs) or to members of specific religions only.¹⁹ Because these exemptions seem to make a benefit available to religious adherents, but not to individuals who are not identified with that group, the exemptions also raise questions of equal protection under the Fifth or Fourteenth Amendment.²⁰ The Supreme Court of Mississippi, one of the states without a religious exemption, has held that requiring certain individuals to be vaccinated while still exposing them to exempted individuals is unconstitutional.²¹

Medicare Revenue Programs

The U.S. tax code includes several provisions that provide religious exceptions to certain revenue programs relating to health care. Specifically, the income "received for services performed by a member of a religious order in the exercise of duties required by the order"²² is exempted from the Federal Insurance Contributions Act (FICA) tax, which funds Social Security and Medicare.²³ Also, ministers, members of religious orders, Christian Science practitioners, and members of religious faiths who oppose acceptance of insurance benefits, including medical care, are generally exempt from self-employment taxes.²⁴

The U.S. Supreme Court has held that the Free Exercise Clause does not prohibit mandatory payment of social security taxes even when the payment of such taxes or the receipt of the related benefits would violate the taxpayer's religion. In *United States v. Lee*, a self-employed Amish

¹⁶ *Prince v. Commonwealth of Massachusetts*, 321 U.S. 158 (1944).

¹⁷ *See, e.g., Cude v. State*, 237 Ark. 927 (1964).

¹⁸ *See, e.g., Lynch v. Donnelly*, 465 U.S. 668, 687 (1984) (O'Connor, J., concurring).

¹⁹ *See, e.g., Boone v. Boozman*, 217 F.Supp.2d 938 (E.D. Ark. 2002).

²⁰ The Fifth Amendment applies to federal government actions, while the Fourteenth Amendment applies to the states.

²¹ *Brown v. Stone*, 376 So.2d 218 (Sup. Ct. Miss. 1979).

²² Rev. Proc. 91-20, 1991-1 C.B. 524.

²³ 26 U.S.C. § 3121(b)(8).

²⁴ *See* 26 U.S.C. § 1402(e) and (g).

man claimed that paying FICA taxes violated his belief in an obligation to provide similar assistance for church members.²⁵ Lee argued that his religion prohibited him from accepting such benefits from the state or paying taxes to fund the social security system. Although the Court recognized a burden on religious belief, it held that the burden was justified by the governmental interest in “maintaining a sound tax system,” and that accommodation of all of the diverse religious beliefs relating to taxation would pose too great a difficulty to maintain a functional tax system.²⁶

Massachusetts Comprehensive Health Care Program

In April 2006, Massachusetts enacted a comprehensive health care program that provides universal coverage for the state’s residents.²⁷ The law requires employers to provide health insurance for employees and requires individuals to purchase insurance (through employers or individually). The state provides alternatives for employers and employees to facilitate the process of universal coverage. For example, employers that do not provide health insurance may instead pay into the state’s uninsured care fund, and individuals who cannot afford coverage may be subsidized by the state. The law’s individual mandate includes some exemptions (including a religious exemption), which allow individuals who meet certain qualifications effectively to opt out of the mandate to acquire insurance coverage.

To qualify for the religious exemption to the individual coverage requirement, an individual must file documentation with his or her tax return. The individual must state in the document “that his sincerely held religious beliefs are the basis of his refusal to obtain and maintain creditable coverage during the 12 months of the taxable year for which the return was filed.”²⁸ If the individual received medical care during the year in which he claimed an exemption, he is responsible for paying for the care and is subject to penalty assessed by the commissioner of revenue.²⁹

Constitutional Analysis of Religious Exemptions in Mandatory Health Care Programs

Religious exemption provisions in mandatory health care programs often raise constitutional issues of religious freedom and equal protection. Any religious exemption must meet the requirements of the First Amendment’s religion clauses, which serve as guarantees that individuals will neither be required to act under a prescribed religious belief (the Establishment Clause) nor be prohibited from acting under their chosen religious beliefs (the Free Exercise Clause). Religious exemptions also may raise equal protection issues under the Fifth Amendment. Thus, constitutional analysis of religious exemptions in mandatory health care programs must address two questions: (1) whether the Constitution requires a religious exemption to ensure the free exercise rights of citizens who may have religious objections to a mandatory program, and

²⁵ 455 U.S. 252 (1982).

²⁶ *Id.* at 259-60.

²⁷ An Act Providing Access to Affordable, Quality, Accountable Health Care, MASS. GEN. LAWS ch. 58, § 12.

²⁸ MASS. GEN. LAWS ch. 111M, § 3.

²⁹ *Id.*

(2) if a religious exemption is not constitutionally required, but included nonetheless, whether it would be constitutional under the First and Fifth Amendments.

Does the Constitution Require a Religious Exemption for Mandatory Health Care Programs?

Any congressional enactment regarding mandatory health care programs would be subject to constitutional rules and would qualify for review under RFRA as a federal action that potentially burdens religious exercise. Thus, any legislation that would mandate a health care program would be subject to strict scrutiny analysis.

Generally, it does not appear that the U.S. Constitution requires a religious exemption with respect to legislation that creates mandatory health care programs, but the details of that legislation may impact the analysis. Under strict scrutiny, an exemption would be required only if the government does not have a compelling state interest that is achieved by the least restrictive means possible. The U.S. Supreme Court and other lower courts generally have allowed federal mandates that relate to public health, but nonetheless interfere with religious beliefs, to continue without exemptions.³⁰ In addressing the issue of religious objections to generally applicable public health requirements, the Supreme Court has upheld legislative acts that promote public policies relating to public health as a valid exercise of protecting the welfare of the people.³¹ The government's interest in protecting public health has been held to outweigh individuals' religious interests. According to the Court, "the right to practice religion freely does not include liberty to expose the community or the child to communicable disease or the latter to ill health or death."³² The Court's decision to hold the interest of public health above the interest of individuals to freely exercise their religious belief was made before the Court applied strict scrutiny to religious exercise cases, but nonetheless provides an indication of the nature of the government's interest in public health regulation. The Court has also held that the government's interest in tax programs used to fund health care programs outweighs individuals' interests in exercising their religion freely.³³ The Court's treatment of public health as an interest paramount to individual religious practice appears to open the door to recognition of public health as a compelling state interest under strict scrutiny analysis.

A mere connection to public health is not necessarily enough to find a compelling interest. Some courts have addressed the issues of religious exemptions in the context of certain mandatory health care programs, but the nature of other programs may lead to different outcomes. Laws that require an affirmative participation in a medical procedure (e.g., vaccination) differ from laws that require a more indirect participation in medical programs (e.g., funding for insurance programs). One factor that might affect the outcome of the constitutional analysis is the role the federal government plays in the objective of the program. Public health has historically been a matter of state regulation.³⁴ The vaccination laws were enacted under states' authority to regulate the public health of their citizens. The federal government, however, does have some authority to

³⁰ See, e.g., *Prince v. Massachusetts*, 321 U.S. 158 (1944); *Cude v. State*, 237 Ark. 927 (1964).

³¹ *Jacobson v. Massachusetts*, 197 U.S. 11 (1905) (seminal case regarding state's authority to institute a mandatory vaccination program as a part of its police powers).

³² *Prince*, 321 U.S. at 166-67.

³³ *Lee*, 455 U.S. at 260-61.

³⁴ See *Gibbons v. Ogden*, 22 U.S. 1 (1824) (addressing divisions of federal and state power).

act in the realm of public health.³⁵ Also, the actual connection to public health might affect whether the government's interest is compelling. For example, although courts have recognized a compelling state interest in statutes preventing the spread of disease, it may be more difficult to find a compelling state interest in requiring individuals to have health insurance. Thus, the government's interest may vary depending on the specific requirements imposed by the legislation.

If the legislation does further a compelling governmental interest, it must also use the least restrictive means. That is, the government must make the burden as narrow as possible. This test may be met by providing alternative means of compliance with the legislation. In the context of the vaccination laws, for example, the government might allow individuals with religious objections to vaccination requirements to be quarantined or isolated to avoid infecting others, rather than receive the vaccination. In the context of universal health care insurance, the government might allow an exemption for individuals with religious objections and also allow individuals who objected without qualifying religious reasons to pay into a state fund rather than receive insurance coverage. These types of accommodations may be deemed the least restrictive means of advancing the government's interest because they satisfy both the individual's free exercise of religion and the government's interest in protecting public health. There may be other accommodations that would satisfy the requirement of tailoring the legislation narrowly to meet strict scrutiny requirements.

Thus, when determining whether a mandatory health care program would require a religious exemption, two factors are critical to the outcome of the analysis. First, the constitutionality would depend on the nature of the mandatory health care program (e.g., whether it is a required medical procedure or a required payment for an insurance program). Second, the constitutionality would depend on the structure of the program (e.g., whether the program provides the required participants options with which to comply in order to meet the program objectives). These factors would affect the extent of the burden placed on an individual's religious exercise and significantly impact the strict scrutiny analysis.

Does the Constitution Allow a Religious Exemption for Mandatory Health Care Programs?

Because legislation that mandates participating in health care programs may conflict with religious beliefs, Congress may choose to include an exemption for relevant religious objections even if it is not required. The exemption would provide an alternative for certain people based on their religious belief that would not be available to other people who do not share that religious belief. Thus, some individuals may claim that the exemption violates the Establishment Clause (by providing a benefit to groups based on religion) and the Equal Protection Clause (by providing for disparate treatment of separate groups).

The Establishment Clause prohibits preferential treatment of one religion over another or preferential treatment of religion generally over nonreligion.³⁶ Providing an exemption based on

³⁵ Federal jurisdiction to regulate public health derives from the Commerce Clause. U.S. CONST. art. I, § 8. The federal government has had a significant role in some public health matters, including food safety agencies, biomedical research programs, and health and safety regulatory programs.

³⁶ *Epperson v. Arkansas*, 393 U.S. 97, 103-04 (1968).

religion may be construed as favoring a particular religion or religion generally because only individuals with religious affiliation would be eligible for the exemption. However, the mere fact that a law addresses religion does not automatically make that law unconstitutional. Under Establishment Clause analysis, a government action must meet a three-part test known as the *Lemon* test. To meet the *Lemon* test, a law must (1) have a secular purpose, (2) have a primary effect that neither advances nor inhibits religion, and (3) not lead to excessive entanglement with religion.³⁷ The Supreme Court has upheld religious exemptions for government programs, where the exemptions were enacted to prevent government interference with religious exercise.³⁸

Like the analysis under the Free Exercise Clause, the constitutionality of a religious exemption under the *Lemon* test would depend on the language of the exemption. Exemptions that are specifically available only to certain religions have been construed in some cases as a violation of the Establishment Clause.³⁹ However, providing an exemption that does not specify certain religions as eligible may not pass the *Lemon* test either. A generally available religious exemption may be construed as a violation of the Establishment Clause because it provides preferential treatment to individuals with religious beliefs, but does not provide individuals who might object on philosophical grounds to claim the exemption.⁴⁰ Thus, there does not appear to be a clear consensus regarding the constitutionality of religious exemptions under the Establishment Clause.

The concerns of preferential treatment for certain groups of individuals that lead to Establishment Clause questions also raise questions under the Equal Protection Clause. The Equal Protection Clause prevents the government from treating some groups of individuals differently than other groups of individuals. If the disparate treatment results from a “suspect classification,” the Equal Protection Clause may be violated. Typically, courts have recognized groups identified by race, national origin, or alienage as suspect classifications. In the context of religious exemptions, the group being treated differently is a group that might be based on religion or might be based on nonreligion. Often, courts decide cases alleging disparate treatment involving religion under the First Amendment, rather than equal protection. Thus, equal protection jurisprudence does not appear to have addressed religious discrimination to a significant extent. Courts have generally held that laws that treat groups of individuals differently because of some animus would be suspect classifications that would be subject to strict scrutiny. Thus, it appears that the analysis under the doctrine of equal protection likely would not produce a different outcome than the analysis that would be used under the First Amendment.

³⁷ *Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971). While the first two prongs of the test are self-explanatory, the third prong prohibits “an intimate and continuing relationship” between government and religion as the result of the law. *Id.* at 621-22. The continuing viability of *Lemon* has been unclear as the Court has raised questions regarding its adequacy in analyzing these issues. *See, e.g., County of Allegheny v. American Civil Liberties Union*, 492 U.S. 573 (1989).

³⁸ The Court in *Locke v. Davey*, 540 U.S. 712 (2004), recognized that some government actions that allow free exercise consequently raise questions of establishment, noting that there was room for “play in the joints” in this intersection of the religion clauses.

³⁹ *See Sherr v. Northport-East Northport Union Free School District*, 672 F. Supp. 81, 89-90 (E.D.N.Y. 1987).

⁴⁰ *See McCarthy v. Boozman*, 212 F.Supp. 2d 945 (W.D. Ark. 2002).

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