

# Big Win for Little Sisters

President Obama's contraceptive mandate gets a high court smackdown.



Nuns with Little Sisters of the Poor outside the U.S. Supreme Court Building in Washington, D.C., March 23.

By  
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First the good news: Though it was more a TKO than a straight-up ruling, the Little Sisters of the Poor prevailed at the Supreme Court on Monday in their fight against the ObamaCare contraceptive mandate.

True, the justices made clear that they were not ruling on the merits, which is why so many headlines speak of the court's having "punted" on the case. Even so, in a unanimous decision they made the path forward much easier for the sisters and much more difficult for the Obama administration.

To begin with, the justices vacated the lower-court rulings the sisters were fighting. The parties, the court said, should have another opportunity to work out a way to deliver contraceptives that doesn't violate the religious objections of the Little Sisters and their co-plaintiffs.

Most important, the Supreme Court took away the administration's tool for bullying: The government, it said, "may not impose taxes or penalties" on those who refuse to authorize their plans to provide the contested coverage.

The bad news is the larger picture. For the main threat to religious liberty these days isn't the Obama administration or even this noxious mandate. It's an aggressive federal government intruding into areas of life previously left unmolested, coupled with an increasingly larger proportion of Americans who have no idea what religious liberty is and why we have it.

The ironies are legion. At this moment in America's history, religious liberty has never had more able champions—including but not limited to the Becket Fund for Religious Liberty, the Alliance Defending Freedom, and First Liberty. These outfits have won many significant cases in recent years. Becket Fund attorneys, for example, are now five wins and zero losses at the Supreme Court.

Unfortunately, a growing portion of society regards religion as a collection of irrational beliefs. They simply cannot fathom why folks with such beliefs ought to be exempt from laws that seem obvious to them and that everyone else is expected to obey.

This view helps explain why so often the aim in religious-liberty cases is not accommodation but submission. In this case for example, when the justices asked the Obama administration if there were any ways to provide women contraceptives other than hijacking the Little Sisters' health plan against their will, the administration hemmed and hawed, first answering "no" until it conceded that maybe it could be done.

In short, the Obama administration's goal was not just getting contraceptives to women. It was also to do so in a way designed to force religious groups such as the Little Sisters to cry "uncle."

Nor is this approach limited to contraceptives. Last summer, when the Supreme Court unearthed a constitutional right to same-sex marriage, the hope was that at least the marriage wars would be over. The reality is we've simply entered Stage Two. In this stage dissenters are brought to heel—whether this means driving Catholic agencies out of the adoption business, fining an

Oregon couple \$135,000 for refusing to bake a cake for a same-sex wedding, or seeking the dismissal of a Wyoming judge who won't officiate at gay marriages.

And it's all fed by people who regard our religious liberty protections as little more than a free pass for bigotry.

Whatever else this is, it's not the live-and-let-live world Justice [Anthony Kennedy](#) promised in 1992's *Planned Parenthood v. Casey*, when he defined liberty as "the right to define one's own concept of existence." Clearly some concepts of existence are more equal than others. It's also striking how reliant the anti-religion side is on government coercion—and a zeal for punishing heretics that itself reflects a quasi-religious fervor.

The misunderstanding of religious liberty, alas, is not confined to the left. On the right, too often it is treated as a parochial issue of import only to the parties involved.

To their credit, this is not a mistake libertarians make. Ilya Shapiro, a senior fellow in constitutional studies at the Cato Institute, notes that while many libertarians would not share the Little Sisters' views on abortion, marriage and contraception, they appreciate that every American has a stake in beating back a federal government poking its nose where it doesn't belong.

"The government created this whole situation," says Mr. Shapiro. "It's not anything the Little Sisters were doing. It's that ObamaCare came along and tried to force the nuns to do something that violated their deepest beliefs."

In the end, this case—or one like it—will be back. The good news is that the court has just stripped the government of much of the firepower it would have used, vacating the appellate court rulings in its favor and forbidding the administration from fining dissenters into submission.

"The solution the justices pointed to has been around for years but this administration has refused all opportunities to compromise," says the Becket Fund's president, William Mumma. "On Monday the Supreme Court smacked them down for it."

