

Thanks to SCOTUS, Vicious Anti-Christian State Action Is Legal in the Ninth Circuit

**By: DAVID FRENCH, June 28, 2016 4:46 PM
The Corner, National Review**

Today the Supreme Court declined to hear one of the most extraordinary and plainly vicious anti-Christian cases I've ever seen. My friends and colleagues at the Alliance Defending Freedom represent the Stormans family, owner's of an Olympia, Washington, pharmacy called Ralph's Thriftway. The Stormans — like many Christians pharmacists — decline to fill prescriptions for abortifacients (drugs that can kill a fertilized egg, often by preventing implantation). When customers request abortifacients, the Stormans decline to fill the prescription and then refer them to one of "more than 30 other pharmacies within five miles of Ralph's."

This process is entirely conventional and normal. Indeed, it was so mundane that the state of Washington stipulated that "facilitated referrals do not pose a threat to timely access to lawfully prescribed medications." In other words, the fact that the Stormans refuse to sell abortifacients didn't cause a single person to lose access to the drug of their choice. But to anti-Christian bigots, it is intolerable that Christian professionals exist unless they bow the knee to the Baal of the sexual revolution, so Washington's governor took action — demanding that the Washington State Board of Pharmacy issue regulations that required pharmacists to issue abortifacients regardless of religious or moral objections. In his dissent from the Court's denial of certiorari, Justice Alito described the state's anti-religious motivations:

The District Court found that the regulations were adopted with "the predominant purpose" to "stamp out the right to refuse" to dispense emergency contraceptives for religious reasons. Among other things, the District Court noted the following. When the Board began to consider new regulations, the Governor of the State "sent a letter to the Board opposing referral for personal or conscientious reasons." The State Human Rights Commission followed with "a letter threatening Board members with personal liability if they passed a regulation permitting referral" for religious or moral reasons. And after the Board initially voted to adopt rules allowing referrals for reasons of conscience, the Governor not only sent another letter opposing the draft rules but "publicly explained that she could remove the Board members" if need be.

Even worse, the Board allowed referrals for non-moral or religious reasons:

As Steven Saxe, the Board's executive director, explained at the time: "[T]he public, legislators and governor are telling us loud and clear that they expect the rule to protect the public from unwanted intervention based on the moral beliefs . . . of a pharmacist." Ibid. "[T]he moral issue IS the basis of the concern." Ibid. Saxe, a primary drafter of the regulations, recognized that the task was "to draft language to allow facilitating a referral for only these non-moral or non-religious reasons." Ibid. He suggested that making an express "statement that does not allow a pharmacist/pharmacy the right to refuse for moral or religious judgment" might be a "clearer" way to "leave intact the ability to decline to dispense . . . for most legitimate examples raised; clinical, fraud, business, skill, etc."

Christian pharmacists could either comply with state demands or close their pharmacies — an action that could actually "reduce patient access to medication by forcing some pharmacies—particularly small, independent ones that often survive by providing specialty services not provided elsewhere—to close."

Predictably, the Ninth Circuit sided with the state. Just as predictably, our pitiful Supreme Court let the ruling stand. So Washington gets away with its pure anti-Christian animus, and it establishes a state religion to the god of sex. While Washington is an outlier (for now), it is showing Blue America the path forward — and any red state governor who refuses to defend religious liberty is completely without excuse. They can't rely on federal courts to cover for their own lack of courage and conviction. As for the church? If it keeps gutlessly delegating defense of its liberties entirely to lawyers and politicians, then it will richly deserve its legal fate. It's time to take a stand.

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