

September 6, 2017

Re: Support for the Conscience Protection Act of 2017 (S. 301)

Dear Senator:

We represent millions of Americans and tens of thousands of health care professionals with a profound concern about abortion, and particularly about the conscience rights of health care professionals and facilities who choose not to participate in this controversial practice. Federal laws protecting conscientious objection to abortion have been approved for decades by Congresses and Presidents of both parties. Even many “pro-choice” Americans realize that the logic of their position requires them to respect a choice *not* to be involved in abortion. Yet, with violations of federal conscience laws occurring in California, New York, Washington, Alaska, Illinois, and most recently Oregon, it is increasingly clear that the current laws offer far less protection in practice than in theory.

For example, the state of California in 2014 began demanding that all health plans under the jurisdiction of the state’s Department of Managed Health Care -- even those purchased by churches and other religious organizations -- cover elective abortions for any reason, including late-term abortions and those performed for reasons of “sex selection.” No exemption of any kind is allowed. This policy flagrantly violates the Weldon amendment, which has been part of the annual Labor/HHS appropriations laws for over a decade. Yet, in response to complaints filed against this policy, the HHS Office for Civil Rights declared on June 21, 2016 that the State of California may continue forcing all health plans under its jurisdiction to cover elective abortions in violation of the plain text of Weldon. Moreover, an attempt by HHS to enforce Weldon could revive a legal challenge to this law by California and other states, based on the law’s broad denial of all Labor/HHS funds to a governmental body that violates it. And Weldon and other federal conscience laws do not authorize a “private right of action” allowing the victims of discrimination to sue on their own behalf, and allowing courts to take measured action to end this discrimination.

Such loopholes in current laws are addressed by the Conscience Protection Act (S. 301), introduced on February 3 by Sen. James Lankford (R-OK). This Act is identical to the Conscience Protection Act of 2016 (S. 304) that passed the House on July 13, 2016 on a bi-partisan vote of 245-182 and has been part of the House’s Labor/HHS appropriations bills for the last few years. It takes the core policy of Weldon -- protecting those who decline to perform, pay for, refer for, or provide coverage for abortion -- and writes it into permanent law. It clarifies the protections of Weldon, and adds a private right of action to enforce this law and other longstanding conscience laws on abortion. This will help nurses and other health professionals like Cathy DeCarlo, threatened with loss of their careers and livelihoods if they do not assist in abortions, whose cases have sometimes languished for years at the HHS Office for Civil Rights.

The bi-partisan support that conscience laws have enjoyed was exemplified in recent years by strong statements of support from former President Obama and his Department of Health and Human Services.¹ Supporters and opponents of abortion alike should be able to agree on promoting the common good by protecting the right of conscience of all providers. This means

¹ 76 Fed. Reg. 9968, 9973 (Feb. 23, 2011).

uniting around the Conscience Protection Act so that these laws can be more effective and have a workable and timely means of enforcement.

This would mean almost no change in the substantive policy of Congress, but it would be an enormous step forward in assuring Americans who serve the sick and needy that they can do so without being forced by government to violate their most deeply held convictions on respect for innocent human life. We urge you to give a high priority to the enactment of the Conscience Protection Act this year. Please support and co-sponsor this important legislation and work to ensure it is enacted into law as part of the Fiscal Year 2018 funding legislation.

Sincerely,

United States Conference of Catholic Bishops
Christian Medical Association
Catholic Medical Association
Knights of Columbus
National Council of Catholic Women
March for Life Education and Defense Fund
American College of Pediatricians
Christ Medicus Foundation
American Association of Pro-Life Obstetricians and Gynecologists
Susan B. Anthony List
National Catholic Bioethics Center
Family Research Council
Americans United for Life
The National Association of Catholic Nurses – U.S.A.
The Catholic Benefits Association
Catholic Healthcare International
National Right to Life Committee
American Academy of Fertility Care Professionals
California Nurses for Ethical Standards
Institute for Youth Development
Alliance Defending Freedom
Liberty HealthShare
Solidarity HealthShare
National Coalition of Healthcare Sharing Ministries
Faith and Freedom Coalition
Southern Baptist Ethics & Religious Liberty Commission
National Association of Pro-Life Nurses
Sacred Heart Mercy Healthcare Centers (Michigan and Minnesota)
Association of American Physicians and Surgeons
National Association of Evangelicals
Franciscan Alliance
Heartbeat International
Divine Mercy Care