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WHY WE NEED THE HEALTH CARE CONSCIENCE RIGHTS ACT

On February 12, 2015, Rep. Diane Black (R-TN) introduced H.R. 940, the Health Care Conscience Rights Act. As of September 8 it had 152 co-sponsors. On August 4, Senator James Lankford (R-OK) introduced an identical bill in the Senate (S. 1919) with 14 co-sponsors. Here is why this law is needed.

While federal laws exist now to protect conscience rights in health care,[1] there is clearly a need for legislation to make this protection truly effective. The three most important existing laws are:

- Church amendment of 1973 (right of health care providers in certain federally funded institutions and programs to object to abortion or sterilization, and sometimes to any procedure, on moral or religious grounds)

- Coats/Snowe amendment of 1996 (no governmental discrimination against medical residents or residency programs that decline involvement in abortion training)

- Hyde/Weldon amendment to Labor/HHS appropriations bills enacted every year since 2004 (no governmental discrimination against individual or institutional health care providers that decline to perform, refer for or pay for abortions)

Each law has been found to have serious limitations:

- *None* of these laws has a "private right of action" allowing victims of discrimination to go to court, so enforcement is left up to the Department of Health and Human Services which has itself become a perpetrator of discrimination (e.g., exclusion of pro-life groups from human trafficking program).

- *None* of them addresses the new nationwide mandates for specific benefits in private health plans created under the Affordable Care Act (ACA), such as the regulatory mandate for including contraceptive, sterilization and abortifacient coverage under "preventive services."

- Some provisions in the Church amendment only address discrimination by the federal government (and federally funded private institutions) in certain very specific health programs.

[1] See "Current Federal Laws Protecting Conscience Rights," at www.usccb.org/issues-and-action/religious-liberty/conscience-protection/upload/Federal-Conscience-Laws.pdf.

- Some have interpreted Coats/Snowe as addressing governmental discrimination against pro-life health care providers only in the context of abortion *training*.

- Hyde/Weldon, intended to correct this deficiency in Coats/Snowe, must be renewed each year and has its own drawbacks. For example, as a "limitation of funds" rider in an appropriations bill, its only stated penalty is the loss of all federal Labor, HHS and Education funds for a federal agency or state government that violates the provision -- and some violators believe this penalty is so large that it would never be applied against them in practice. Pro-abortion groups even claim that this broad "spending condition" makes the provision constitutionally suspect. Hyde/Weldon also addresses discrimination only by governmental bodies, not by private entities like hospitals and medical schools (even those receiving federal funds).

The Health Care Conscience Rights Act corrects each of these problems:

[Sec. 1 states the bill's title; Sec. 2 has findings on the need for better conscience laws.]

Sec. 3: Respecting Conscience Rights in Health Coverage

Creates a new section 1566 of the ACA, stating that this federal law cannot be used to mandate coverage of "an abortion or other item or service" to which an individual, sponsor or insurer has a moral or religious objection. Health plans that exclude a particular item on such grounds cannot be penalized under the Act. This section does not affect any other state or federal law; the requirements of laws such as the Pregnancy Discrimination Act and the Civil Rights Act remain in place. Moreover, the conscience protection cannot be used to deny coverage to enrollees because of someone's judgment that their disability or "quality of life" makes them less deserving of treatment.

Sec. 4: Abortion Nondiscrimination for Health Care Providers

Makes the policy of the Hyde/Weldon amendment clearer and more permanent, by adding language to the Coats/Snowe amendment in current law (42 USC 238n). It is made clear that the policy against discrimination covers abortion in non-training contexts, and protects the full range of health care providers.

Sec. 5: Remedies for Violations of Federal Conscience Laws

Creates new sec. 245a of the Public Health Service Act, to establish a private right of action, so victims of discrimination can take their case to federal court. This remedy is available for the two sections described above, and the Church amendment of 1973. Courts can grant limited relief that is sufficient to stop the violation of law and compensate for losses.

With these modifications to current law, the promise of the Founders, that Americans would not be forced by their government to violate their deepest convictions of conscience, will at last be fulfilled in the modern health care system.

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