

# Stripping Health Care Providers of Conscience Protection: A Bad Move Based on a Made-Up “Right”



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The Obama administration has decided to roll back a rule issued by the Department of Health and Human Services during the Bush administration that provided enforceable conscience protection for health care providers and institutions who do not wish to become involved with abortion. Shortly before he left the White House, President Bush facilitated the issuing of these regulations by his Department of Health and Human Services (“HHS”). They became effective during January 2009. The first draft of these regulations were issued by HHS for public comment in August of 2008, and elicited a reflection from Culture of Life Fellow Dr. Christian Brugger. He wrote at that time that abortion activists focused their public opposition to these regulations upon the possibility that they could empower health care providers to refuse to dispense “emergency contraception” (EC) given some evidence that EC might act as an abortifacient in some instances.

The President is powerless alone to withdraw all conscience protection from health care providers because there is legislation on the books which guarantees protection to individuals and institutions who receive federal HHS money, and the President cannot single-handedly overturn a law (though the present Congress surely could; we’ll face that crisis when it comes). It is the Hyde/Weldon Conscience Protection Amendment passed every year since 2004 as part of a congressional spending (“appropriations”) bill. But the President has the power to order one of his agencies &ndash; HHS &ndash; to “interpret” that legislation which at the moment is silent on the meaning of “abortion.” It is very likely, given the President’s aggressive and lock-step pursuit of the agenda of the National Abortion Rights Action League in his mere 51 days in office, that his staff at HHS will “interpret” the regulation so as to define abortion to *exclude* the destruction of embryos prior to the time that they are implanted in their mother’s womb. Catholic hospitals and providers, along with other hospitals and providers morally opposed to abortion, would then *not* be excused from dispensing a chemical that might result in the destruction of a fully human and alive embryo.

This much you might already have known. So what more can be said other than to get those cards and letters in to HHS the moment the new rule becomes subject to public commentary? Much more, and it needs to be said now while the administration is still getting ready to cross off yet another item on it’s “how-to-normalize-abortion” to-do list. Several options come to mind. First, we need to remind the administration that while it is very powerful, it is not powerful enough to change facts, like the fact that a genetically human and unique individual begins his or her life with the embryonic phase. All the word-smithing in the world won’t alter this fact.

Second, we need to remind the administration that this whole conscience-protection



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issue arose only because a bare majority of an unelected body &ndash; the U.S. Supreme Court &ndash; decided unilaterally to overturn the laws of the 50 states and to call abortion a “right.” It is only because abortion is called a “right” that laws had to be passed to excuse people and institutions from acknowledging or deferring to it. But those laws were passed, and mighty fast. Within weeks after *Roe v. Wade* invented the abortion right, Congress invented conscience protection. The Church Amendment (named after then-Senator Frank Church) protected health care providers receiving federal grants from performing or assisting with abortion against their moral or religious convictions. Right away one gets the impression that abortion was as hotly disputed then as it is today. For the Obama administration to be parsing and narrowing the meaning of conscience protection against a “right” that was invented out of thin air and disputed every day since its invention, is hardly fair play to the millions of Americans who oppose the vast majority of abortions in the United States.

Third, threats against citizens’ consciences would not likely be happening if there were actually more doctors and hospitals willing to perform abortions. Abortion is still ghettoized in America -- relegated to clinics and doctors who are not part of the mainstream medical establishment. Abortion supporters are acting out of fear that the declining number of abortion providers will make abortion harder to access. This is not the posture of a “winning” position but of a losing one. The extremely heated rhetoric of doctors and interest groups who oppose conscientious objection gives evidence of their fear: The Attorney General of Connecticut called the Bush HHS regulations “outrageous” and an “appalling insult and abuse,” and NARAL calls conscience protection “refusal clauses.” The emperor has no clothes. Mainstream medical providers are not volunteering to perform abortions, so the new administration is trying to force conscientious objectors to perform them. This is what is really going on.

Fourth, is now really the time to be driving conscientious doctors and hospitals out of the business of treating women? Is there really ever a good time to do this? Honest, non-profit, community-oriented health care providers who also exercise an option for the poor are hard to come by in this world. Various Catholic bishops and doctors have made it clear that Catholic hospitals and providers will not be coerced into cooperating with abortion. The Obama administration’s latest action is only likely to drive some of the country’s most conscientious health care providers out of the market precisely by denying them rights of conscience. To answer my own questions then: “No and no, there’s never a good time to do this.”

Fifth and finally &ndash; doesn’t the White House have enough controversies and challenges on its plate at the moment? But let’s not go there.....

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