



Secretariat for Pro-Life Activities

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Dear Member of Congress:

I am writing on an issue that should be a matter of agreement among members who call themselves “pro-life” and “pro-choice”: the freedom of health care providers to serve the public without violating their most deeply held moral and religious convictions on the sanctity of human life.

On July 15, pro-abortion groups publicly attacked what purports to be a leaked draft of a proposed federal regulation on the conscience rights of health care providers (R. Pear, “Abortion Proposal Sets Condition on Aid,” *The New York Times*, July 15, 2008, p. A17). Already Rep. Henry Waxman (D-CA) and others have circulated a letter in the House urging Members to write to President Bush opposing any (as yet unpublished) regulations on this topic.

I am not writing to comment publicly on the details of an unpublished draft allegedly leaked from a government agency. The Catholic bishops’ conference will be glad to provide public comment on a proposed rule if and when it is published, as provided for by law. But the critics’ charges are sweeping enough that a few general comments on conscience protection in health care seem warranted.

First, Congress has passed numerous laws protecting rights of conscience in health care, beginning in 1973 with the various provisions of the “Church amendment” (named for prime sponsor Senator Frank Church [D-ID]). Some of these laws address such rights in a specific context, such as abortion or AIDS prevention; some explicitly address both abortion and sterilization; and some try to ensure respect for individuals’ moral and religious convictions in programs receiving federal funds regardless of the specific issue. (For an overview see www.usccb.org/prolife/issues/abortion/crmay08.pdf.) The critics’ surprise that conscience protection may apply beyond the specific issue of abortion seems based on a lack of knowledge of existing federal law.

Second, despite Congress’s frequently demonstrated concern about conscience rights over 35 years, none of these statutes has been clarified or enforced through implementing regulations. Partly as a result, relatively few policy makers or health care personnel are even aware that these laws exist – which means that some institutions may be violating them without even knowing it, and others who are victims of discrimination may not know that they have any legal recourse. For example, in November 2007 the Ethics Committee of the American College of Obstetricians and Gynecologists issued an opinion stating that pro-life physicians must do abortion referrals – and ACOG had to be reminded by the Secretary of Health and Human Services that such coerced referrals are among the abuses that federal conscience laws have long been directed against. It seems the statutory policy is clear and needed, and at the same time is relatively unknown, misunderstood and unenforced. This is a paradigm instance calling for the executive branch to

reaffirm and implement the statutes, especially as fundamental rights are at stake. If the Administration is preparing regulations along these lines, it would simply be performing its proper task in an area of law where that is long overdue.

Third, efforts to protect rights of conscience are being attacked by critics as a threat to women's "access" to abortion and birth control. This is an interesting charge. For many years, pro-abortion groups have insisted that abortion and related services are "basic" and mandatory aspects of health care. They have opposed conscience clauses, dismissively calling them "refusal clauses," claiming that they protect an irrational "refusal" by a tiny minority of religious zealots to comply with this supposedly objective medical standard. Now they have reversed their stand, claiming that conscientious objection to these procedures is so pervasive in the health care professions that policies protecting conscience rights will eliminate access to them.

Obviously these two claims cancel each other out. I would suggest, however, that if a procedure really elicits widespread ethical disapproval from conscientious health professionals, and must be imposed on unwilling physicians and nurses by force of law in order to be available at all, it may not be as "basic" as pro-abortion groups imagine. I would add that patients with pro-life convictions, including women who require a physician's care for themselves and their unborn children during pregnancy, deserve "access" to health care professionals who do not have contempt for their religious and moral convictions or for the lives of their children.

This issue provides self-described "pro-choice" advocates with an opportunity to demonstrate their true convictions. Do they agree with most Americans that abortion is a moral concern? Do they at least hold that "freedom of choice" must belong to everyone, including those who have deep moral concerns in this area? Or is the "pro-choice" label a misleading mask for an agenda of actively promoting and even imposing morally controversial procedures on those who conscientiously hold different views? Reactions to efforts to reaffirm and implement laws on conscience protection may provide an answer.

Sincerely,



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