

Testimony of

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Subcommittee on Health

Written Testimony for the Hearing Record on  
"Do New Health Law Mandates Threaten Conscience Rights and Access to Care?"

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Mr. Chairman, Ranking Member Pallone and Members of the Subcommittee, thank you for this opportunity to present testimony on behalf of Catholics for Choice on this important question of conscience rights and access to comprehensive healthcare.

For nearly 40 years, Catholics for Choice has served as a voice for Catholics who believe that the Catholic tradition supports a woman's moral and legal right to follow her conscience on matters of sexuality and reproductive health. Throughout the world, we strive to be an expression of Catholicism as it is lived by ordinary people. We are part of the great majority of the faithful in the Catholic church who disagrees with the dictates of the Vatican on matters related to sex, marriage, family life and motherhood. We represent those who believe that Catholic teachings on conscience mean that every individual must follow his or her own conscience—and respect others' right to do the same.

Certainly, at Catholics for Choice, we are no strangers to the intersection of religion, sex and politics. While religious voices and traditions are a vital part of public discourse, religious views should not be given disproportionate weight in public policy discussions. When this happens the lives of men and women can suffer greatly. We believe in a world where all voices, the voices of the religious and of the secular, of Catholics and non-Catholics alike, are heard in public policy discussions.

This hearing seeks to answer the question: Do new health law mandates threaten conscience rights and access to care? I firmly believe the requirements under the Affordable Care Act, and the slate of regulations being created to implement it, infringe on no one's conscience, demand no one change her or his religious beliefs, discriminate against no man or woman, put no additional economic burden on the poor, interfere with no one's medical decisions, compromise no one's health—that is, if you consider the law without refusal clauses. When the question is asked in light of these unbalanced and ever-expanding clauses, the answer becomes yes, it would do all these things. When burdened by such refusal clauses, the new health law absolutely threatens the conscience rights of every patient seeking care for these restricted services and of every provider who wishes to provide comprehensive care to their patients. These restrictions go far beyond their intent of protecting conscience rights for

all by eliminating access to essential healthcare for many, if not most patients, especially in the area of reproductive healthcare services. This will make it harder for many working Americans to get the healthcare they need at a cost they can afford.

The Affordable Care Act has many positive elements to it. Millions will now be able to access insurance coverage for their health needs and, with the basic level of coverage required under the new law, these newly insured and the millions of those better insured will now have greater access to a wider range of services than ever before. However, the law includes a refusal clause which has been expanded in the past decades to threaten the consciences of both those who seek to receive and those who want to provide services. Advocates of these expansive refusal clauses claim these are necessary to protect conscience rights. Others believe that refusal clauses such as these are simply part of attempts to derail the Affordable Care Act and to curb access to reproductive healthcare services entirely. Moreover, proposals to expand existing refusal clauses increase threats to the conscience rights of patients and providers by including not just abortion but also family planning services and, should some get their way, any other service deemed “unacceptable” by a tiny minority.

In recent years, under the guise of protecting religious freedom and “conscience rights” we have seen a dramatic upswing in attempts to expand the scope of refusal clauses, their application, and the entities able to utilize them. These new, ever-broader refusal clauses do far more than allow those healthcare professionals or social service providers with conscience objections to opt out. Instead, they are effectively being used as a means to refuse some treatments, medications, benefits and services to all comers.

These expansions have increased not only the services that may be refused—including reproductive health services as well as insurance coverage for those services and even training for medical professionals—but they have also the number of those who may claim these protections. Almost everyone, including most Catholics, agrees that it is reasonable to allow healthcare professionals, including doctors, nurses and pharmacists, to opt out of providing essential reproductive healthcare

services and medications to which they conscientiously object. There is no doubt that there are times when the conscience of an individual doctor, nurse or pharmacist may conflict with the wishes or needs of a patient. This often happens in cases related to abortion. Except in emergency situations, it is reasonable and indeed prudent to allow those who are opposed to abortion to opt out of providing the service. In these situations, women seeking these services should not have to worry about the religious and moral beliefs of their healthcare providers interfering with the provision of the best possible care. Therefore, it is in the best interests of all that only medical professionals committed to providing such services do so. Women need support and compassionate care when they access reproductive healthcare services, not judgment and disdain.

When this is not possible, a reasonable ethical fallback is for the institution to guarantee timely referrals to ensure that patients receive continuity of care without facing an undue burden, such as traveling long distances or encountering additional barriers to obtaining the desired services.

Moreover, good practice should also compel a religious institution to make sure that the consciences of both the healthcare (or social services) provider and the patient (or client) are accommodated by having policies in place that enable individuals to receive whatever medications they are prescribed, procedures they require or services they seek.

Like many Catholics, I accept that conscience has a role to play in providing healthcare services, but recent moves to expand conscience protections beyond the simple right for individual healthcare providers to refuse to provide services to which they personally object go too far. Increasingly, demands and regulatory proposals attempt to grant that option to an institution or any individual along the spectrum of care, funding and coverage. It is incredible to suggest that a hospital or an insurance plan has a conscience. Granting institutions, or entities like these, legal protection for the rights of conscience that properly belongs to individuals is an affront to our ideals of conscience and religious freedom.

Allowing religious institutions to dictate the medical care available to their employees or religiously-affiliated organizations to dictate what services their beneficiaries are allowed to access would encroach on the individual consciences of those seeking care and assistance. Refusal clauses such as these fly in the face of true religious freedom by promoting the interests of certain elements of particular religions over the consciences and beliefs of individuals. They ignore the moral agency of the many who do not share the beliefs of a particular religious ideology. If allowed to stand, these refusal clauses do nothing but endanger many women's access to the healthcare they need. When codified into law at the federal or state level, these "protections" actually constitute state-sponsored discrimination against women based on where they are employed, where and how they buy health insurance and where they seek to receive care.

Today, the 98 percent of sexually active Catholic women in the US who have used a form of contraception banned by the Vatican have exercised their religious freedom and followed their consciences in making the decision to use contraception. Thus, they are in line with the totality of Catholic teachings, if not with the views of the hierarchy. The problem is very clearly with the Catholic hierarchy and not the Catholic church, which includes the vast majority of the 68 million Catholics in the United States who use and support the availability of comprehensive reproductive healthcare services for all those who choose to utilize them.

Having failed to convince Catholics in the pews, the United States Conference of Catholic Bishops (USCCB) and other conservative Catholic organizations are now attempting to impose their personal beliefs on all people by seeking special protection for their "conscience rights." They claim to represent all Catholics when, in truth, theirs is the minority view. The bishops have identified several sympathetic high-profile allies in healthcare, education and social service provision to assist them in promoting their demands, but these allies are heavily reliant on the bishops for funding and prestige. Hospitals and colleges can lose their Catholic designation at the bishop's whim, as happened recently in Phoenix, Arizona.

At a Catholic hospital in Phoenix, medical professionals acted to save the life of a pregnant woman by performing a life-saving abortion on a mother of four. The local bishop decided that his authority over the hospital allowed him to second-guess the medical decisions they made and he stripped the hospital of its Catholic designation. This is antithetical to the Catholic social justice tradition, which would not leave a woman's life out of any healthcare equation.

What occurred in Phoenix helps to illustrate the problem with the bishops' intrusion into medical decisions. The personal and professional freedom to make healthcare decisions is being threatened by expansive refusal clauses. The exemptions that the USCCB and other conservative Catholic organizations are demanding do not offer any more protection for religious freedom, but rather impede the religious freedom of millions of Americans, taking reproductive healthcare options away from everybody.

The USCCB and some Catholic organizations, many that receive taxpayer money, are asking to be allowed to:

- deny condoms as part of HIV outreach;
- ban employees and their dependents from getting the benefit of no-cost contraceptive coverage that other insured Americans enjoy;
- opt out of providing emergency contraception to victims of sexual violence who come to Catholic hospitals for help; and
- deny abortion care to everybody—even those women whose lives are threatened by their pregnancy.

They claim that they are representing all Catholics, but this is not true. The majority of Catholics support equal access to contraceptive services and oppose policies that impede upon that access. Two-thirds of Catholics (65 percent) believe that clinics and hospitals that take taxpayer money should not be allowed to refuse to provide procedures or medications based on religious beliefs. A similar

number, 63 percent, also believes that health insurance, whether private or government-run, should cover contraception.<sup>1</sup> A strong majority (78 percent) of Catholic women prefer that their hospital offer emergency contraception for rape victims, while more than half (55 percent) want their hospital to provide it in broader circumstances.<sup>2</sup> This support for the full range of contraceptive services is unsurprising, as restrictions such as refusal clauses or prohibitive costs affect Catholics just as often as non-Catholics—98 percent of sexually active Catholic women have used a modern method of birth control, mirroring the rate of the population at large (99 percent).<sup>3</sup>

Advocating for expansive refusal clauses in healthcare delivery regulations would affect all patients—whether those patients are Catholic or not. Seeking exemptions for religious organizations to cover essential health benefits, such as full coverage of recommended preventive services including contraception, under the Affordable Care Act will only serve to endanger many women’s access to the healthcare they need—whether those employees share those religious beliefs or not. In reality, these exemptions would deny the right of everyone seeking comprehensive healthcare.

When religious voices are allowed to direct policymaking, the best interests of those seeking healthcare services can be ignored. This is clear in the case of the Catholic healthcare industry which, despite providing much valuable service, persists in refusing to provide a full range of reproductive healthcare services, even to those who are in desperate need of them.

Respect for individual conscience is at the core of Catholic teaching. Catholicism also requires deference to the conscience of others in making one’s own decisions. Our faith compels us to listen to our own consciences in matters of moral decision-making and to respect the rights of others to do the same. Our intellectual tradition emphasizes that conscience can be guided, but not forced, in any

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<sup>1</sup> Belden Russonello & Stewart, “Catholic Voters’ Views on Health Care Reform and Reproductive Health Care Services: A National Opinion Survey of Catholic voters conducted for Catholics for Choice,” September 2009.

<sup>2</sup> Ibis Reproductive Health. Second chance denied: Emergency contraception in Catholic hospital emergency rooms. A report for Catholics for Choice, 2002.

<sup>3</sup> US Department of Health and Human Services, National Center for Health Statistics, “National Survey of Family Growth,” 2008.

direction. This deference for the primacy of conscience extends to all men and women and to their personal decisions about moral issues.

Our faith also compels us to respect religious pluralism and religious freedom. Religious freedom is an expansive rather than restrictive idea. It has two sides: freedom of religion and freedom from religion. It is not about telling people what they can and cannot believe or practice, but rather about respecting an individual's right to follow his or her own conscience in religious beliefs and practices, as well as in moral decision making. The protections we put in place to preserve religious freedom do not permit religious institutions or individuals to obstruct or coerce the exercise of another's conscience.

Sweeping refusal clauses and exemptions allow a few to dictate what services many others may access. They disrespect the individual capacities of women to act upon their individual conscience-based decision. They impede the rights of women and men to make their own decisions about what is best for their own health, and that of their families, as well as restricting their right to act upon those decisions without undue and unjust burdens.

One woman who saw these burdens placed on her conscience rights is "Sandra," a science teacher at a Catholic school in the Midwest. Her story is an example of the many Americans who fall under these types of expansive refusal clauses being pushed by the bishops and their allied organizations. What is a reality for Sandra today is what many women can look forward to in their future.

As with almost all Catholic schools, Sandra's employers follow diocesan rules regarding employees' insurance—meaning no contraceptive coverage, regardless of medical necessity. When she first learned of the refusal clause proposed in the recent regulation to implement the preventive health services under the Affordable Care Act, she was outraged. As she explained to us, they added "insult to injury" by ignoring the healthcare needs of women like her and allowing her employers to continue to deny her coverage.

"I just never assumed that in 2011 I would be denied birth control," she said. "I'm in my mid-twenties. I have no intention of having kids at the moment. I like teaching kids, but it's a whole other thing having them."

Sandra lost coverage when she began working under the jurisdiction of her local diocese. "I went to fill my birth control prescription like I always do. I say 'Here's my new insurance card,' and they say I'm not covered," she related. "They thought that it was weird and asked where I worked. As soon as I said I worked in a Catholic school, they said, 'Oh, 99 percent of Catholic schools will not cover it. We've never had it covered before.' I had no clue."

For Sandra, this posed a significant hardship. She had taken a salary reduction in order "to go to work every day saying that it's what I love." She and her husband had carefully considered their insurance plans and determined that it was more economical for them to remain on separate policies, but once she had to pay out of pocket for the birth control that was best for her, a non-generic prescription, their careful financial planning was all for naught.

"Birth control is a lot of extra money on top of the salary reduction, but the principle of it is really what gets me," she told us. "I don't like being told by some guy that I've never met that I can't use it. The bishops are not even having sex in the first place. How are they supposed to know how to tell me what to do in that situation?"

Her story, as she recognized, is all too common and reflects the repeated marginalization of many women by the Catholic hierarchy—the same women whose voices have been deemed unimportant by those on both sides of the recent debates. Sandra is just one of the many individuals whose conscience is not being protected by refusal clauses exempting entire institutions from covering their employees for services guaranteed to everyone else by the new law.

Catholic teachings on conscience require due deference to the conscience of others in making decisions—that the employer should not be allowed to dismiss the conscience of the employee

seeking coverage for the healthcare services guaranteed to any other. In light of this precept, the public policy efforts of the hierarchy should take into account the experiences of individual Catholics as well as the beliefs of patients and clients, workers in social services and healthcare providers of other faiths and no faith, so that patients will not be refused any legal and medically appropriate treatment or be denied services they seek.

You have heard from some conservative Catholics on this issue, but it would be a grave mistake to confuse the individual positions of a few powerful interest groups with the majority view of the more than 68 million Catholics in the United States. For Catholic employers to claim to be the arbiter of any person's good conscience is clearly disingenuous. When medical professionals refuse to provide legal reproductive health services, or provide timely referrals to other providers, they violate the right to conscience of the person seeking those services. This does not fall under anybody's definition of a good conscience. Catholics for Choice and the majority of Catholics respect everybody's individual conscience and their ability to act in accordance with their personal beliefs. However, we expect the hierarchy and their allied organizations, in keeping with the teachings of our shared Catholic faith and our American tradition, to respect our consciences and the consciences of the patients and clients who seek the services they need. We hope that those who serve to represent all of us in public service and in government will respect our consciences, too.

Protecting the freedom of conscience for all Americans no matter what their beliefs may be—for the atheist, for the employee of a Catholic institution, for the sexual assault victim who seeks care at a Catholic hospital—is indeed the job of the government. Expanding individual refusal clauses to include institutions and exemptions for religious institutions to deny the rights of all would sacrifice these people's rights. Public policy should be implemented to further the common good and to enable people to exercise their conscience-based healthcare decisions.

Lawmakers of all political hues can come together to support a balanced approach to individual conscience rights and access to comprehensive healthcare. It makes sense for all those who want to

provide more options to women seeking to decide when and whether to have a child. It makes sense for those who want to keep the government's involvement in healthcare to a minimum. And it makes sense for those who think that it is the government's role to facilitate the healthcare decisions that people want to make. Above all, it makes sense for a society that believes in freedom of religion—a right one can't claim for oneself without extending it to one's neighbor. The bottom line is that protecting conscience rights and preserving access to care shouldn't just be about protecting those who seek to dictate what care is and is not available to all. Nor should it be for those who would dismiss the conscience of others by imposing their view of which consciences are worth protecting. Protecting individual conscience and ensuring access to affordable, quality care is not just an ideal, it is a basic tenet of our society and it is the right thing to do.

I thank the Subcommittee for inviting me today and for your attention. I look forward to any questions Members may have.