To ensure that organizations with religious or moral convictions are allowed to continue to provide services for children.

IN THE HOUSE OF REPRESENTATIVES

APRIL 4, 2017

Mr. KELLY of Pennsylvania (for himself, Mr. PITTENGER, Mr. DUNCAN of South Carolina, Mr. ROTHFUS, Mr. SMITH of New Jersey, Mr. HULTGREN, Mr. JONES, Mr. PALAZZO, Mr. RENACCI, Mr. KING of Iowa, Mr. PALMER, Mr. MOONEY of West Virginia, Mr. GROTHMAN, and Mr. SESSIONS) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To ensure that organizations with religious or moral convictions are allowed to continue to provide services for children.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Child Welfare Provider Inclusion Act of 2017”.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds the following:
(1) Child welfare service providers, both individuals and organizations, have the inherent, fundamental, and inalienable right to free exercise of religion protected by the United States Constitution.

(2) The right to free exercise of religion for child welfare service providers includes the freedom to refrain from conduct that conflicts with their sincerely held religious beliefs.

(3) Most States provide government-funded child welfare services through various charitable, religious, and private organizations.

(4) Religious organizations, in particular, have a lengthy and distinguished history of providing child welfare services that predates government involvement.

(5) Religious organizations have long been and should continue contracting with and receiving grants from governmental entities to provide child welfare services.

(6) Religious organizations cannot provide certain child welfare services, such as foster-care or adoption placements, without receiving a government contract, grant or license.

(7) Religious organizations display particular excellence when providing child welfare services.
Children and families benefit greatly from the child welfare services provided by religious organizations.

(9) Governmental entities and officials administering federally funded child welfare services in some States, including Massachusetts, California, Illinois, and the District of Columbia, have refused to contract with religious organizations that are unable, due to sincerely held religious beliefs or moral convictions, to provide a child welfare service that conflicts, or under circumstances that conflict, with those beliefs or convictions; and that refusal has forced many religious organizations to end their long and distinguished history of excellence in the provision of child welfare services.

(10) Ensuring that religious organizations can continue to provide child welfare services will benefit the children and families that receive those federally funded services.

(11) States also provide government-funded child welfare services through individual child welfare service providers with varying religious and moral convictions.

(12) Many individual child welfare service providers maintain sincerely held religious beliefs or
moral convictions that relate to their work and should not be forced to choose between their livelihood and adherence to those beliefs or convictions.

(13) Because governmental entities provide child welfare services through many charitable, religious, and private organizations, each with varying religious beliefs or moral convictions, and through diverse individuals with varying religious beliefs or moral convictions, the religiously impelled inability of some religious organizations or individuals to provide certain services will not have a material effect on a person’s ability to access federally funded child welfare services.

(14) The activities of funding and administering these child welfare services substantially affect interstate commerce.

(15) Taking adverse actions against child welfare service providers that are unable, due to their sincerely held religious beliefs or moral convictions, to provide certain services (or provide services under certain circumstances) substantially affects interstate commerce.

(16) The provisions of this Act are remedial measures that are congruent and proportional to protecting the constitutional rights of child welfare
service providers guaranteed under the Fourteenth Amendment to the United States Constitution.

(17) Congress has the authority to pass this Act pursuant to its spending clause power, com-
merce clause power, and enforcement power under section 5 of the Fourteenth Amendment to the United States Constitution.

(b) PURPOSES.—The purposes of this Act are as fol-

(1) To prohibit governmental entities from discriminating or taking an adverse action against a child welfare service provider on the basis that the provider declines to provide a child welfare service that conflicts, or under circumstances that conflict, with the sincerely held religious beliefs or moral convictions of the provider.

(2) To protect child welfare service providers’ exercise of religion and to ensure that governmental entities will not be able to force those providers, either directly or indirectly, to discontinue all or some of their child welfare services because they decline to provide a child welfare service that conflicts, or under circumstances that conflict, with their sincerely held religious beliefs or moral convictions.
(3) To provide relief to child welfare service providers whose rights have been violated.

SEC. 3. DISCRIMINATION AND ADVERSE ACTIONS PROHIBITED.

(a) The Federal Government, and any State that receives Federal funding for any program that provides child welfare services under part B or part E of title IV of the Social Security Act (and any subdivision, office or department of such State) shall not discriminate or take an adverse action against a child welfare service provider on the basis that the provider has declined or will decline to provide, facilitate, or refer for a child welfare service that conflicts with, or under circumstances that conflict with, the provider’s sincerely held religious beliefs or moral convictions.

(b) Subsection (a) does not apply to conduct forbidden by paragraph (18) of section 471(a) of such Act.

SEC. 4. FUNDS WITHHELD FOR VIOLATION.

The Secretary of Health and Human Services shall withhold from a State 15 percent of the Federal funds the State receives for a program that provides child welfare services under part B or part E of title IV of the Social Security Act if the State violates section 3 when administering or disbursing funds under such program.
SEC. 5. PRIVATE RIGHT OF ACTION.

(a) A child welfare service provider aggrieved by a violation of section 3 may assert that violation as a claim or defense in a judicial proceeding and obtain all appropriate relief, including declaratory relief, injunctive relief, and compensatory damages, with respect to that violation.

(b) A child welfare service provider that prevails in an action by establishing a violation of section 3 is entitled to recover reasonable attorneys’ fees and costs.

(e) By accepting or expending Federal funds in connection with a program that provides child welfare services under part B or part E of title IV of the Social Security Act, a State waives its sovereign immunity for any claim or defense that is raised under this section.

SEC. 6. SEVERABILITY.

If any provision of this Act, or any application of such provision to any person or circumstance, is held to be unconstitutional, the remainder of this Act and the application of the provision to any other person or circumstance shall not be affected.

SEC. 7. EFFECTIVE DATE.

(a) The amendments made by this Act shall take effect on the 1st day of the 1st fiscal year beginning on or after the date of the enactment of this Act, and the withholding of funds authorized by section 4 shall apply
to payments under parts B and E of such Act for calendar quarters beginning on or after such date.

(b) If legislation (other than legislation appropriating funds) is required for a governmental entity to bring itself into compliance with this Act, the governmental entity shall not be regarded as violating this Act before the 1st day of the 1st calendar quarter beginning after the first regular session of the legislative body that begins after the date of the enactment of this Act. For purposes of the preceding sentence, if the governmental entity has a 2-year legislative session, each year of the session is deemed to be a separate regular session.

SEC. 8. DEFINITIONS.

The following definitions apply throughout this Act:

(1) The term “child welfare service provider” includes organizations, corporations, groups, entities, or individuals that provide or seek to provide, or that apply for or receive a contract, subcontract, grant, or subgrant for the provision of, child welfare services. The provider need not be engaged exclusively in child welfare services to be considered a child welfare service provider.

(2) The term “child welfare services” means social services provided to or on behalf of children, including assisting abused, neglected, or troubled chil-
dren, counseling children or parents, promoting foster parenting, providing foster homes or temporary group shelters for children, recruiting foster parents, placing children in foster homes, licensing foster homes, promoting adoption, recruiting adoptive parents, assisting adoptions, supporting adoptive families, assisting kinship guardianships, assisting kinship caregivers, providing family preservation services, providing family support services, and providing time-limited family reunification services.

(3) The term “State” includes any of the several States, the District of Columbia, any commonwealth, territory or possession of the United States, and any political subdivision thereof.

(4) The terms “funding”, “funded”, or “funds” include money paid pursuant to a contract, grant, voucher, or similar means.

(5) The term “adverse action” includes, but is not limited to, denying a child welfare service provider’s application for funding, refusing to renew the provider’s funding, canceling the provider’s funding, declining to enter into a contract with the provider, refusing to renew a contract with the provider, canceling a contract with the provider, declining to issue a license to the provider, refusing to renew the pro-
provider’s license, canceling the provider’s license, terminating the provider’s employment, or any other adverse action that materially alters the terms or conditions of the provider’s employment, funding, contract, or license.