

118TH CONGRESS
2D SESSION

H. R. 8857

To amend the Public Health Service Act to prohibit discrimination against health care entities that do not participate in abortion, and to strengthen implementation and enforcement of Federal conscience laws.

IN THE HOUSE OF REPRESENTATIVES

JUNE 27, 2024

Mr. BANKS (for himself, Mr. MOONEY, Mr. LAMALFA, Mr. CRENSHAW, Mrs. MILLER of Illinois, Mrs. HINSON, Mr. ADERHOLT, Mr. BERGMAN, Mr. BACON, Mr. BURCHETT, Mr. FINSTAD, Mr. DUNCAN, Ms. FOXX, Mr. GOSAR, Mr. KUSTOFF, Mr. HIGGINS of Louisiana, Mrs. LESKO, Mr. MOOLENAAR, Mr. WALBERG, Mr. GOODEN of Texas, Mr. ARMSTRONG, Mr. WEBER of Texas, Mr. FEENSTRA, Mr. WALTZ, Mr. SMITH of Nebraska, Mr. LAMBORN, Mr. LUETKEMEYER, Mr. LOUDERMILK, Mr. FITZGERALD, Mr. TIMMONS, Mr. POSEY, Mr. RUTHERFORD, Mr. PENCE, Mr. WEBSTER of Florida, Mr. GUEST, Mr. MANN, Mrs. BICE, Mr. CRANE, and Mr. WENSTRUP) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To amend the Public Health Service Act to prohibit discrimination against health care entities that do not participate in abortion, and to strengthen implementation and enforcement of Federal conscience laws.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Conscience Protection
3 Act of 2024”.

4 **SEC. 2. FINDINGS.**

5 Congress finds as follows:

6 (1) Thomas Jefferson stated a conviction com-
7 mon to our Nation’s founders when he declared in
8 1809 that “[n]o provision in our Constitution ought
9 to be dearer to man than that which protects the
10 rights of conscience against the enterprises of the
11 civil authority”.

12 (2) No health care entity should have to choose
13 between giving up their religious, moral, ethical, or
14 medical convictions and abandoning a vital medical
15 mission. Congress enacted more than two dozen pro-
16 visions in Federal statutes to protect such rights in
17 health care, which also protect States’ ability to op-
18 erate in accordance with their laws to protect similar
19 rights without fear of retaliation from the Federal
20 Government. Such provisions of Federal statutes in-
21 clude—

22 (A) subsections (b) through (e) of section
23 401 of the Health Programs Extension Act of
24 1973 (42 U.S.C. 300a–7) (commonly known,
25 and referred to in this section, as the “Church
26 Amendments”);

1 (B) section 245 of the Public Health Serv-
2 ice Act (42 U.S.C. 238n) (commonly known as
3 the “Coats-Snowe Amendment”);

4 (C) the Weldon Amendment approved by
5 Congresses and Presidents of both parties every
6 year since 2004 (including section 507(d) of the
7 Departments of Labor, Health and Human
8 Services, and Education, and Related Agencies
9 Appropriations Act, 2023 (division H of the
10 Consolidated Appropriations Act, 2023 (Public
11 Law 117–328))); and

12 (D) other conscience protections, as out-
13 lined in the final rule issued by the Secretary
14 of Health and Human Services entitled “Pro-
15 tecting Statutory Conscience Rights in Health
16 Care; Delegations of Authority” (84 Fed. Reg.
17 23170; May 21, 2019), under the Patient Pro-
18 tection and Affordable Care Act, under the So-
19 cial Security Act, and with respect to global
20 health programs and advanced directives.

21 (3) Courts have held that certain conscience
22 protection statutes do not provide a “private right of
23 action” for individuals or entities who have been dis-
24 criminated against, thereby leaving victims of dis-
25 crimination unable to defend their own conscience

1 rights in court. At the same time, administrative im-
2 plementation and enforcement of these laws by the
3 Office for Civil Rights of the Department of Health
4 and Human Services have been inconsistent and at
5 times cases are allowed to languish for years or pre-
6 viously enacted enforcement measures are aban-
7 doned or reversed.

8 (4) Defying the Weldon Amendment, the Cali-
9 fornia Department of Managed Health Care has
10 mandated coverage for elective abortions in all
11 health plans under its jurisdiction. Other States,
12 such as New York, Illinois, and Washington, have
13 taken or considered similar action, and some States
14 have required hospitals to provide or facilitate abor-
15 tions. On June 21, 2016, the Office for Civil Rights
16 of the Department of Health and Human Services,
17 under the Obama Administration, concluded a nearly
18 2-year investigation of this matter by determining
19 that the decision of California to require insurance
20 plans under the California Department for Managed
21 Health Care authority to cover abortion services did
22 not violate the Weldon Amendment. At least 28,000
23 individuals and families subsequently lost abortion-
24 free health plans as a result of this mandate in vio-

1 lation of their consciences and rights under the
2 Weldon Amendment.

3 (5) On January 24, 2020, the Office for Civil
4 Rights of the Department of Health and Human
5 Services disavowed its prior findings and issued a
6 notice of violation of the Weldon Amendment to
7 California. After the State's continued noncompli-
8 ance with the Weldon Amendment, the Centers for
9 Medicare & Medicaid Services, on December 16,
10 2020, announced the disallowance of \$200,000,000
11 per quarter in Federal funds to California beginning
12 in the first quarter of 2021.

13 (6) Although California had taken no action to
14 come into compliance with the Weldon Amendment,
15 on August 13, 2021, the Office for Civil Rights of
16 the Department of Health and Human Services
17 under the Biden Administration withdrew the notice
18 of violation and closed the complaints filed with the
19 Department. As a result, individuals continue to be
20 coerced contrary to law into choosing between vio-
21 lating their consciences or forgoing health care cov-
22 erage for themselves, their employees, and their fam-
23 ilies.

24 (7)(A) On August 28, 2019, the Office for Civil
25 Rights of the Department of Health and Human

1 Services under the Trump Administration issued a
2 notice of violation against the University of Vermont
3 Medical Center for violation of the Church Amend-
4 ments after it was found to have scheduled approxi-
5 mately 10 nurses who had registered conscience ob-
6 jections to abortion to assist with approximately 20
7 abortion procedures and for maintaining policies
8 that explicitly required employees with conscience
9 objections to participate in procedures with which
10 they disagreed to “ensure that patient care is not
11 negatively impacted”. Such practices were found to
12 be part of an “ongoing pattern, practice, and policy
13 of discriminating against health care providers who
14 believe that the performance, or the assistance in the
15 performance, of abortions is contrary to their reli-
16 gious beliefs or moral convictions”.

17 (B) After the University of Vermont Medical
18 Center refused to come into compliance with the law,
19 the Department of Justice brought an enforcement
20 action in Federal court against the medical center
21 on December 16, 2020.

22 (C) On July 30, 2021, the Department of Jus-
23 tice under the Biden Administration voluntarily dis-
24 missed the case, without any binding settlement or
25 requirement that the University of Vermont Medical

Center remedy its unlawful policies or make restitution to the employees whose rights it violated.

(8) On May 21, 2019, the Secretary of Health and Human Services issued the final rule entitled “Protecting Statutory Conscience Rights in Health Care; Delegations of Authority” (84 Fed. Reg. 23170; May 21, 2019) to implement 25 Federal conscience protection provisions governing programs funded under the Department of Health and Human Services and provide mechanisms to enforce conscience laws to ensure that the government and government-funded entities are not unlawfully discriminating against health care entities. Despite this regulation providing for enforcement of laws passed by Congress, the rule faced numerous legal challenges and was vacated.

(9) On January 11, 2024, the Department of Health and Human Services published a final rule that fails to equip the Department with the tools necessary for effective enforcement of Federal statutory protections of rights of conscience.

(10) Congress has acted numerous times to expand access to health care and has also acted numerous times to provide unqualified statutorily protected rights of conscience to individuals and entities

1 in certain circumstances. A health care entity’s deci-
2 sion not to participate in an abortion, assisted sui-
3 cide, procedures that can result in sterilization, or
4 other interventions erects no barrier to those legally
5 seeking to perform or undergo such interventions
6 elsewhere.

7 (11) The vast majority of medical professionals
8 do not perform abortions. Ninety-three percent of
9 obstetricians/gynecologists in private practice report
10 that they did not provide abortions (National Li-
11 brary of Medicine, April 2018) and the great major-
12 ity of hospitals choose to do so only in rare cases or
13 not at all.

14 (12) In the landmark 2022 decision, *Dobbs v.*
15 *Jackson Women’s Health Organization*, the Supreme
16 Court held that “the Constitution does not confer a
17 right to abortion”.

18 (13) On July 13, 2022, the Department of
19 Health and Human Services issued guidance to re-
20 tail pharmacies in the United States. Such guidance
21 purported to address their obligations under Federal
22 nondiscrimination laws, but in actuality orders phar-
23 macies to stock and dispense abortion pills despite
24 the fact that pharmacies and pharmacists have a

1 right to not violate their conscience by participating
2 in abortion under existing law.

3 (14) Conscience protections pose no conflict
4 with other Federal laws, such as the law requiring
5 stabilizing treatment for a “pregnant woman . . . or
6 her unborn child” when either needs emergency care
7 (Emergency Medical Treatment and Active Labor
8 Act). As previous Administrations have said, these
9 areas of law have operated side by side for many
10 years and both should be fully enforced (76 Fed.
11 Reg. 9968–77 (2011) at 9973).

12 (15) Reaffirming longstanding Federal policy
13 on conscience rights and providing a private right of
14 action in cases where it is violated allows long-
15 standing and widely supported Federal laws to work
16 as intended.

17 **SEC. 3. PROHIBITING DISCRIMINATION AGAINST HEALTH**
18 **CARE ENTITIES THAT DO NOT PARTICIPATE**
19 **IN ABORTION.**

20 Title II of the Public Health Service Act (42 U.S.C.
21 202 et seq.) is amended by inserting after section 245 the
22 following:

1 **“SEC. 245A. PROHIBITING DISCRIMINATION AGAINST**
2 **HEALTH CARE ENTITIES THAT DO NOT PAR-**
3 **TICIPATE IN ABORTION.**

4 “(a) IN GENERAL.—Notwithstanding any other law,
5 the Federal Government, and any individual or entity that
6 receives Federal financial assistance, including any State
7 or local government, may not penalize, retaliate against,
8 or otherwise discriminate against a health care entity on
9 the basis that such health care entity does not or declines
10 to—

11 “(1) provide, perform, refer for, pay for, or oth-
12 erwise participate in abortion;

13 “(2) provide or sponsor abortion coverage; or

14 “(3) facilitate or make arrangements for any of
15 the activities specified in this subsection.

16 “(b) RULE OF CONSTRUCTION.—Nothing in this sec-
17 tion shall be construed—

18 “(1) to prevent any health care entity from vol-
19 untarily electing to participate in abortions or abor-
20 tion referrals where not prohibited by any other law;

21 “(2) to prevent any health care entity from vol-
22 untarily electing to provide or sponsor abortion cov-
23 erage or health benefits coverage that includes abor-
24 tion where not prohibited by any other law;

25 “(3) to prevent an accrediting agency, the Fed-
26 eral Government, or a State or local government

1 from establishing standards of medical competency
2 applicable only to those who have knowingly, volun-
3 tarily, and specifically elected to perform abortions,
4 or from enforcing contractual obligations applicable
5 only to those who, as part of such contract, know-
6 ingly, voluntarily, and specifically elect to provide
7 abortions;

8 “(4) to affect, or be affected by, any Federal
9 law that requires stabilizing treatment for a preg-
10 nant woman or her unborn child when either needs
11 emergency care; or

12 “(5) to supersede any law enacted by any State
13 for the purpose of regulating insurance, except as
14 specified in subsection (a).

15 “(c) DEFINITIONS.—For purposes of this section:

16 “(1) FEDERAL FINANCIAL ASSISTANCE.—The
17 term ‘Federal financial assistance’ means Federal
18 payments to cover the cost of health care services or
19 benefits, or other Federal payments, grants, or loans
20 to promote or otherwise facilitate health-related ac-
21 tivities.

22 “(2) HEALTH CARE ENTITY.—The term ‘health
23 care entity’ includes—

1 “(A) an individual physician, health care
2 assistant, nurse, pharmacist, health researcher,
3 or other health care personnel;

4 “(B) a hospital, laboratory, pharmacy,
5 health system, or other health care or medical
6 research facility or organization (including a
7 party to a proposed merger or other collabo-
8 rative arrangement relating to health services,
9 and an entity resulting therefrom);

10 “(C) a provider-sponsored organization, an
11 accountable care organization, or a health
12 maintenance organization;

13 “(D) a social services provider that pro-
14 vides or authorizes referrals for health care
15 services;

16 “(E) a program of training or education in
17 the health professions or medical research, a
18 participant in such a program, or any individual
19 applying or otherwise aspiring to participate in
20 such a program;

21 “(F) an issuer of health insurance cov-
22 erage or of a health plan;

23 “(G) a health care sharing ministry;

1 “(H) a health insurance plan, including
 2 group, individual, or student health plans, or a
 3 sponsor or administrator thereof; or

4 “(I) any other health care organization,
 5 program, facility, or plan.

6 “(3) STATE OR LOCAL GOVERNMENT.—The
 7 term ‘State or local government’ includes every
 8 agency and other governmental unit and subdivision
 9 of a State or local government, if such State or local
 10 government, or any agency or governmental unit or
 11 subdivision thereof, receives Federal financial assist-
 12 ance.”.

13 **SEC. 4. STRENGTHENING ENFORCEMENT OF FEDERAL**
 14 **CONSCIENCE LAWS.**

15 Title II of the Public Health Service Act (42 U.S.C.
 16 202 et seq.), as amended by section 3, is further amended
 17 by inserting after section 245A the following:

18 **“SEC. 245B. ADMINISTRATIVE ENFORCEMENT OF FEDERAL**
 19 **CONSCIENCE LAWS.**

20 “(a) REGULATIONS.—

21 “(1) IN GENERAL.—Under this section, the
 22 Secretary may issue regulations under any provision
 23 of law described in paragraph (2).

1 “(2) PROVISIONS OF LAW.—The provisions of
2 law described in this paragraph are each of the fol-
3 lowing:

4 “(A) Sections 245, 245A, 399M(d), and
5 520E(f) of this Act.

6 “(B) The Religious Freedom Restoration
7 Act of 1993, with respect to any program or ac-
8 tivity funded, administered, or conducted by the
9 Department of Health and Human Services.

10 “(C) Any of subsections (b) through (e) of
11 section 401 of the Health Programs Extension
12 Act of 1973 (commonly known as the ‘Church
13 Amendments’), only with respect to an objection
14 based on a religious belief or moral conviction.

15 “(D) Section 507(d) of the Departments of
16 Labor, Health and Human Services, and Edu-
17 cation, and Related Agencies Appropriations
18 Act, 2023 (division H of the Consolidated Ap-
19 propriations Act, 2023 (Public Law 117–328))
20 (commonly known as the ‘Weldon Amendment’)
21 and any subsequent substantially similar provi-
22 sion in an appropriations Act, to the extent ad-
23 ministered by the Secretary.

24 “(E) Section 209 of the Departments of
25 Labor, Health and Human Services, and Edu-

1 cation, and Related Agencies Appropriations
2 Act, 2023 (division H of the Consolidated Ap-
3 propriations Act, 2023 (Public Law 117–328))
4 and any subsequent substantially similar provi-
5 sion in an appropriations Act, to the extent ad-
6 ministered by the Secretary.

7 “(F) Clauses (i) and (ii) of paragraph
8 (1)(A) of section 1303(b) of the Patient Protec-
9 tion and Affordable Care Act (only with respect
10 to a determination not to provide coverage of
11 abortion), and paragraph (4) of such section.

12 “(G) Section 1411(b)(5)(A) of the Patient
13 Protection and Affordable Care Act (other than
14 with respect to an exemption as an Indian or a
15 hardship exemption) and section
16 5000A(d)(2)(A) of the Internal Revenue Code
17 of 1986.

18 “(H) Section 1553 of the Patient Protec-
19 tion and Affordable Care Act.

20 “(I) Sections 1122(h), 1162, 1821,
21 1861(e), 1861(y)(1), and 1861(ss) of the Social
22 Security Act, and the first paragraph of the
23 matter following section 1902(a)(87)(D) of such
24 Act, each of such provisions only with respect

1 to protections for religious nonmedical health
2 care institutions.

3 “(J) Sections 1852(j)(3)(B), 1866(f)(4),
4 1902(w)(3), 1902(w)(5), 1907,
5 1928(c)(2)(B)(ii) (with respect to a religious or
6 other exemption), 1932(b)(3)(B), and 2012(b)
7 of such Act.

8 “(K) Section 4206(c) of the Omnibus
9 Budget Reconciliation Act of 1990.

10 “(L) Section 7 of the Assisted Suicide
11 Funding Restriction Act of 1997.

12 “(M) Section 113(a) of the Child Abuse
13 Prevention and Treatment Act.

14 “(N) Section 301(d) of the United States
15 Leadership Against HIV/AIDS, Tuberculosis,
16 and Malaria Act of 2003 to the extent adminis-
17 tered by the Secretary.

18 “(O) The third sentence of section
19 20(a)(5) of the Occupational Safety and Health
20 Act of 1970.

21 “(P) Section 104(f)(1) of the Foreign As-
22 sistance Act of 1961 (commonly known as the
23 ‘Helms Amendment’), and any provision of an
24 appropriations Act or other Federal law that re-
25 states or incorporates by reference the protec-

1 tions of such section, to the extent administered
2 by the Secretary.

3 “(Q) The ninth proviso under the heading
4 ‘Global Health Programs’ under the heading
5 ‘Funds Appropriated to the President’ under
6 title III of the Department of State, Foreign
7 Operations, and Related Programs Appropria-
8 tions Act, 2023 (division K of the Consolidated
9 Appropriations Act, 2023 (Public Law 117–
10 328)) and any subsequent substantially similar
11 provision in an appropriations Act to the extent
12 administered by the Secretary.

13 “(R) Any other provision of law protecting
14 the exercise of conscience or religious freedom
15 under programs or activities funded, adminis-
16 tered, or conducted by the Department of
17 Health and Human Services.

18 “(b) OFFICE FOR CIVIL RIGHTS.—The Secretary
19 shall designate the Director of the Office for Civil Rights
20 of the Department of Health and Human Services—

21 “(1) to receive complaints alleging a violation of
22 any provision of law described in subsection (a)(2);
23 and

1 “(2) to promptly investigate such complaints,
 2 issue findings, and require corrective action in cases
 3 of such a violation.

4 “(c) ENFORCEMENT.—

5 “(1) IN GENERAL.—The Secretary shall, as
 6 permitted under law (including the Constitution of
 7 the United States), induce compliance of an indi-
 8 vidual or entity, including a State or local govern-
 9 ment, failing to comply with any provision of law de-
 10 scribed in subsection (a)(2), by terminating, in whole
 11 or in part, any Federal financial assistance provided
 12 by the Secretary to such individual or entity.

13 “(2) REFERRALS.—The Secretary shall, as the
 14 Secretary determines necessary for inducing compli-
 15 ance with a provision described in paragraph (1),
 16 refer a violation of such a provision to the Attorney
 17 General for a civil action in accordance with section
 18 245C.

19 **“SEC. 245C. CIVIL ACTION FOR VIOLATIONS OF FEDERAL**
 20 **CONSCIENCE LAWS.**

21 “(a) IN GENERAL.—A qualified party may, in a civil
 22 action, obtain relief described in subsection (e) with re-
 23 spect to a designated violation.

24 “(b) DEFINITIONS.—For purposes of this section:

1 “(1) DESIGNATED VIOLATION.—The term ‘des-
2 ignated violation’ means an actual or threatened vio-
3 lation of any provision of law described in section
4 245B(a)(2).

5 “(2) QUALIFIED PARTY.—The term ‘qualified
6 party’ means—

7 “(A) the Attorney General; or

8 “(B) any individual or entity adversely af-
9 fected by the designated violation without re-
10 gard to whether such individual or entity is a
11 health care entity as defined in section 245A(c).

12 “(c) ADMINISTRATIVE REMEDIES NOT REQUIRED.—
13 An action under this section may be commenced, and relief
14 may be granted, without regard to whether the party com-
15 mencing the action has sought or exhausted any available
16 administrative remedies.

17 “(d) DEFENDANTS IN ACTIONS UNDER THIS SEC-
18 TION MAY INCLUDE GOVERNMENTAL ENTITIES AS WELL
19 AS OTHERS.—

20 “(1) IN GENERAL.—An action under this sec-
21 tion may be maintained against any individual or en-
22 tity receiving Federal financial assistance (as defined
23 in section 245A(c)), including a State governmental
24 entity. Relief in an action under this section may in-

1 clude money damages even if the defendant is a gov-
2 ernmental entity.

3 “(2) DEFINITION.—For the purposes of this
4 subsection, the term ‘State governmental entity’
5 means a State, a local government within a State,
6 and any agency or other governmental unit or sub-
7 division of a State, or of such a local government.

8 “(e) NATURE OF RELIEF.—In an action under this
9 section, the court shall grant—

10 “(1) all appropriate relief, including injunctive
11 relief, declaratory relief, and compensatory damages
12 to prevent the occurrence, continuance, or repetition
13 of the designated violation and to compensate for
14 losses resulting from the designated violation; and

15 “(2) to a prevailing plaintiff, reasonable attor-
16 neys’ fees and litigation costs.”.

17 **SEC. 5. SEVERABILITY.**

18 If any provision of this Act or an amendment made
19 by this Act, or the application of such a provision or
20 amendment to any individual, entity, government, or cir-
21 cumstance, is held to be unconstitutional, the remainder
22 of this Act and the amendments made by this Act, and
23 the application of such provision or amendment to any

- 1 other individual, entity, government, or circumstance,
- 2 shall not be affected.

