ACLJ

MEMORANDUM

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Conscience Rights of Health Care Personnel

As founding father, James Madison, once wrote, "conscience is the most sacred of all property."[1] Conscience rights are not only important to the health care community but to every American. In *Cantwell v. Connecticut*, the Supreme Court stated, "Freedom of conscience and freedom to adhere to such religious organization or form of worship as the individual may choose cannot be restricted by law." When it comes to the conscience rights of health care personnel, numerous state and federal laws have been enacted to ensure these individuals' conscience rights are not violated. The three main federal conscience laws that will be discussed below are the Church Amendment, the Coats-Snowe Amendment, and the Weldon Amendment. The discussion below will also analyze Title VII of the Civil Rights Act of 1964 and the right this law gives to health care providers, as well as the Religious Freedom Restoration Act.

The Church Amendment

Following the controversial ruling in *Roe v. Wade*, a federal district court wrongfully forced a religiously affiliated hospital to use its facilities for a sterilization procedure.[2] In response to *Taylor v. St. Vincent's Hospital*, the growing need to protect the conscience rights of health care workers and entities was addressed when Congress passed the "Church Amendment" in 1973 (Senator Frank Church was the principal sponsor of the law).[3] Essentially, the statute protects the conscience rights of health care personnel working at entities that receive funds and grants from the U.S. Department of Health and Human Services. The law provides in relevant part:

> *Discrimination prohibition*
> *No entity which receives a grant, contract, loan, or loan guarantee under the Public Health Service Act [42 U.S.C. 201 et seq.], the Community Mental Health Centers Act [42 U.S.C. 2689 et seq.], or the Developmental Disabilities Services and Facilities Construction Act [42 U.S.C. 6000 et seq.] after June 18, 1973, may—*

[1] James Madison, *Property* (1792), in 1 *The Founders' Constitution* 598, 598 (Philip B. Kurland and Ralph Lerner eds., 1986).
[2] See *Taylor v. St. Vincent's Hospital*, 369 F. Supp. 948 (D. Mont. 1973).
[3] 42 U.S.C. § 300a-7.

(A) discriminate in the employment, promotion, or termination of employment of any physician or other health care personnel, or
(B) discriminate in the extension of staff or other privileges to any physician or other health care personnel,

because he performed or assisted in the performance of a lawful sterilization procedure or abortion, because he refused to perform or assist in the performance of such a procedure or abortion on the grounds that his performance or assistance in the performance of the procedure or abortion would be contrary to his religious beliefs or moral convictions, or because of his religious beliefs or moral convictions respecting sterilization procedures or abortions.[4]

Doctors and health care personnel have "broad and comprehensive conscience protections guaranteed by federal law." *FDA v. All. for Hippocratic Med*., 602 U.S. 367, 390 (2024). The Supreme Court stated:

> [F]ederal conscience laws definitively protect doctors from being required to perform abortions or to provide other treatment that violates their consciences. *See* 42 U. S. C. §300a-7(c)(1); see also H. R. 4366, 118th Cong., 2d Sess., Div. C, Title II, §203 (2024). The Church Amendments, for instance, speak clearly. They allow doctors and other healthcare personnel to "refus[e] to perform or assist" an abortion without punishment or discrimination from their employers. 42 U. S. C. §300a-7(c)(1). And the Church Amendments more broadly provide that doctors shall not be required to provide treatment or assistance that would violate the doctors' religious beliefs or moral convictions. §300a-7(d).

Id. at 387.

The Court continued:

> [F]ederal conscience protections encompass "the doctor's beliefs rather than particular procedures," meaning that doctors cannot be required to treat mifepristone complications in any way that would violate the doctors' consciences. Tr. of Oral Arg. 37; *see* §300a-7(c)(1). As the Government points out, that strong protection for conscience remains true even in a so-called healthcare desert, where other doctors are not readily available.

Id. at 388.

(Though the Court references "doctors" in these paragraphs explaining the breadth of protection afforded by federal law, the Church Amendments do not just protect the conscience rights of doctors but all "health care personnel." 42 U.S.C. § 300a-7(c)(1)(A) and (B).)

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[4] *Id.*

In *All. for Hippocratic Med*., the plaintiff-doctors expressed the fear that Emergency Medical Treatment and Labor Act (EMTALA) "could be interpreted to override those federal conscience laws and to require individual emergency room doctors to participate in emergency abortions in some circumstances. *See* 42 U. S. C. §1395dd." However, as the Supreme Court noted:

> [T]he Government has disclaimed that reading of EMTALA. And we agree with the Government's view of EMTALA on that point. EMTALA does not require doctors to perform abortions or provide abortion-related medical treatment over their conscience objections because EMTALA does not impose obligations on individual doctors. As the Solicitor General succinctly and correctly stated, **EMTALA does not "override an individual doctor's conscience objections."** We agree with the Solicitor General's representation that federal conscience protections provide "broad coverage" and will "shield a doctor who doesn't want to provide care in violation of those protections."

Id. at 388-89 (citations omitted) (emphasis added).

In fact, relying on admissions by the federal government, the Supreme Court went on to observe, that

> [D]octors need not follow a time-intensive procedure to invoke federal conscience protections. A doctor may simply refuse; federal law protects doctors from repercussions when they have "refused" to participate in an abortion. §300a-7(c)(1). And as the Government states, "[h]ospitals must accommodate doctors *in emergency rooms no less than in other contexts*." For that reason, hospitals and doctors typically try to plan ahead for how to deal with a doctor's absence due to conscience objections.

Id. at 389 (internal citations omitted) (emphasis added).

The Coats-Snowe Amendment (42 U.S.C. § 238n)

In response to medical students feeling coerced into learning how to perform abortions, Congress passed the Coats-Snowe Amendment in 1996.[5] The Coats-Snowe Amendment is divided into three sections. In sum, the law prohibits federal and state governments from compelling or coercing participation in abortion training.[6] Additionally, such training cannot be a condition of any accreditation or licensure. The key language of the statute is provides as follows:

> (a) ***In general.*** *The Federal Government, and any State or local government that receives Federal financial assistance, may not subject any health care entity to discrimination on the basis that—*

[5] *City & Cnty. of San Francisco v. Azar*, 411 F. Supp. 3d 1001, 1006 (N.D. Cal. 2019).
[6] 42 U.S.C. 238n.

(1) *the entity refuses to undergo training in the performance of induced abortions, to require or provide such training, to perform such abortions, or to provide referrals for such training or such abortions;*
(2) *the entity refuses to make arrangements for any of the activities specified in paragraph (1); or*
(3) *the entity attends (or attended) a post-graduate physician training program, or any other program of training in the health professions, that does not (or did not) perform induced abortions or require, provide or refer for training in the performance of induced abortions, or make arrangements for the provision of such training.*
(b) ***Accreditation of postgraduate physician training programs.***
(1) *In general. In determining whether to grant a legal status to a health care entity (including a license or certificate), or to provide such entity with financial assistance, services or other benefits, the Federal Government, or any State or local government that receives Federal financial assistance, shall deem accredited any postgraduate physician training program that would be accredited but for the accrediting agency's reliance upon an accreditation standards [standard] that requires an entity to perform an induced abortion or require, provide, or refer for training in the performance of induced abortions, or make arrangements for such training, regardless of whether such standard provides exceptions or exemptions. The government involved shall formulate such regulations or other mechanisms, or enter into such agreements with accrediting agencies, as are necessary to comply with this subsection.*[7]

It is important to note that "health care entity" is defined by the Amendment as including an "individual physician, a postgraduate physician training program, and a participant in a program of training in the health professions."[8]

Weldon Amendment

Similar to the Coats-Snowe Amendment, the Weldon Amendment protects against governmental coercion in the context of abortion. However, the Weldon Amendment sweeps more broadly across the medical field. The Weldon Amendment cuts federal funding from federal and state government entities if those entities discriminate against health care entities on the basis that the health care entity does not provide, pay for, provide coverage of, or refer for abortions.[9] Specifically, the federal funds referenced here are appropriated funds. Where the Weldon Amendment sweeps broader than the Coats-Snowe Amendment is in the definition of "health care entity." In the Weldon Amendment a health care entity is defined as, "individual physician or other health care professional, a hospital, a provider-sponsored organization, a health maintenance organization, a health insurance plan, or any other kind of health care facility, organization, or

[7] *Id.*
[8] *Id.*
[9] 84 F.R. 23170, 23172.

plan."[10] This law is a vital layer in the protection of health care conscience rights. Virtually, all health care workers are protected from state criminal prosecution or loss of their medical license.[11]

Title VII of the Civil Rights Act of 1964

Title VII of the Civil Rights Act of 1964 serves as a protection for religious rights in the workplace by making it illegal for an employer to discriminate against employees or prospective employees based on his/her religion. The law states in pertinent part:

> *(a) Employer Practices*
>
> *It shall be an unlawful employment practice for an employer-*
>
> (1) *to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's… religion; or*
>
> (2) *to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's…religion.*
>
> *For the purposes of this subchapter-*
>
> *(j) The term "religion includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.*

The Supreme Court has held that any accommodation requiring the employer to bear "more than a de minimis cost," or, in other words, "additional costs when no such costs are incurred," constitutes an "undue hardship." *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63, 84 (1977). This includes any accommodation that results in additional costs in the "form of lost efficiency… or higher wages." *Id.* at 84.

In *Groff v. DJoy*,[12] the Supreme Court held that the term "undue hardship" means "an employer must show that the burden of granting an accommodation would result in substantial increased costs in relation to the conduct of its particular business." The Court clarified further that the determination of undue hardship should be based on a fact-specific inquiry, considering the nature, size, and operating cost of the employer. The impact of a religious accommodation on coworkers is relevant only to the extent that it affects the conduct of the business.

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[10] Weldon Amendment, Consolidated Appropriations Act, 2009, Pub. L. No. 111-117, 123 Stat 3034.
[11] *State ex rel. Lockyer v. United States*, 450 F.3d 436, 441 (9th Cir. 2006).
[12] 2023 U.S. LEXIS 2790 (June 29, 2023).

Importantly, the *Groff* Court emphasized that bias or hostility toward a religious practice or accommodation cannot be considered a valid defense for the employer: "An employer who fails to provide an accommodation has a defense only if the hardship is 'undue,' a hardship that is attributable to employee animosity to a particular religion, to religion in general, or to the very notion of accommodating religious practice cannot be considered 'undue.'"[13]

Groff has significant implications for addressing religious accommodations in the workplace. It reaffirms the protection of religious believers under Title VII and clarifies that employers must demonstrate that the burden of accommodating an employee's religious practice is substantial.

This case also provides a new rubric for assessing future religious accommodation cases under Title VII, requiring a more nuanced analysis that considers the specific circumstances and impact on the employer's business. How that rubric will be applied by the lower courts remains to be seen.

The Religious Freedom Restoration Act

The "Religious Freedom Restoration Act" (RFRA) serves as a protection against the federal government's intrusion on one's religious liberty and freedom of conscience.[14] As part of RFRA, the government may only "substantially burden" one's exercise of religion if it demonstrates that the burden to the person furthers a compelling governmental interest and is the least restrictive means of furthering that interest.[15] RFRA explicitly provides for judicial relief to those whose religious exercise has been burdened due to a violation of this law.[16]

It is important to emphasize that RFRA protects employers as well as employees. In *Burwell v. Hobby Lobby Stores, Inc.*, the Supreme Court held that privately held, for-profit corporations did not have to comply with Department of Health and Human Service (HHS) regulations that were contrary to the business owners' religious beliefs. 573 U.S. 682, 690 (2014). In *Hobby Lobby*, the Supreme Court held that the HHS regulations at issue, which mandated that corporations provide contraceptive coverage (including abortion-inducing drugs), violated RFRA. *Id*. at 736. By applying RFRA to organizations like Hobby Lobby, the Supreme Court effectively ushered in a new era of protections for the religious principles and freedom of conscience rights of private businesses.

Following *Hobby Lobby*, the Supreme Court held in *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, that the federal government had the authority to craft religious exemptions for organizations that opposed the contraceptive mandate on religious grounds. 140 S. Ct. 2367, 2386 (2020). *Little Sisters of the Poor v. Pennsylvania* followed a prior case involving the Little Sisters of the Poor, a Catholic caregiving organization that objected to complying with the Affordable Care Act's contraceptive mandate. *Id*. at 2376. As a result of that first case, in 2017, federal agencies issued new rules which offered moral and/or religious exemptions from complying with the mandate. In response, Pennsylvania and several other states sued to have those exemptions enjoined, forcing the Little Sisters of the Poor and other religious employers to provide contraceptive

[13] 2023 U.S. LEXIS 2790 at *35.
[14] RELIGIOUS FREEDOM RESTORATION ACT OF 1993, 1993 Enacted H.R. 1308, 103 Enacted H.R. 1308, 107 Stat. 1488, 1489
[15] *Id.*
[16] *Id.*

coverage in violation of their religious beliefs. Ultimately, the Supreme Court ruled 7-2 in favor of the Sisters, and found that while Congress could have provided strict statutory protections for contraceptive coverage, it failed to do so. *Id*. at 2382. Because the agencies had the statutory authority to provide the Sisters with a religious exemption, the Court did not have to decide whether the contraceptive mandate violated RFRA. *Id*.

Filing a Complaint with the Equal Employment Opportunity Commission

The Equal Employment Opportunity Commission (EEOC), charged with enforcing Title VII, describes various ways how an employee can file a charge of discrimination based on the employee's belief that he/she has been discriminated against based on his/her religion.[17] A charge of discrimination is "a signed statement asserting that an employer, union or labor organization engaged in employment discrimination."[18] The charge of discrimination, which requests remedial action by the EEOC, *must* be filed before an employee can file a Title VII discrimination lawsuit against an employer in court. As a general matter, the charge of discrimination must be filed within 180 calendar days of the alleged act of discrimination.[19] This deadline will not be extended while the employee attempts to deal with the matter internally. It is therefore best to file the charge as soon as possible and to contact your local EEOC office for guidance.[20]

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[17] *How to File a Charge of Employment Discrimination*, U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, https://www.eeoc.gov/how-file-charge-employment-discrimination.
[18] *Filing a Charge of Discrimination: With the EEOC*, U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, https://www.eeoc.gov/filing-charge-discrimination.
[19] *Public Portal,* U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, https://publicportal.eeoc.gov/Portal/Login.aspx.
[20] *EEOC Field Offices,* U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, https://eeoc.gov/field-office.