



The U.S. Capitol is seen in Washington Sept. 26, 2017. (CNS/Tyler Orsburn)



by Julie Bourbon

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Catholic and other faith groups are pursuing legal remedies to protect the conscience rights of health care providers who refuse to offer abortion services on demand. They believe that the Conscience Protection Act of 2017 would fix flaws in existing legislation and prevent them from being discriminated against for their moral convictions.

The act, to be attached to the omnibus spending bill for fiscal year 2018, currently being debated by Congress, would provide an avenue to bring a discrimination case to federal court in the event existing laws are not adequately enforced. The Coats-Snow, Church, and Hyde-Weldon Amendments all in theory prohibit recipients of federal funding from discriminating against individuals or entities that do not provide abortion services or coverage of such services.

But a 2016 ruling by the Office of Civil Rights, under the Department of Health and Human Services, allowed the state of California to mandate that all health plans — even those offered by churches and religious organizations — cover abortion services. There have been similar developments in other states, as faith-based providers have faced possible discrimination or legislative challenges to the exercise of their conscience. According to the [U.S. Conference of Catholic Bishops](#), violations to Hyde-Weldon are "taking place in New York, Washington, Alaska, Illinois, and Oregon." The [Alliance for Conscience Rights](#), a national coalition of faith-based organizations working to strengthen federal conscience rights laws, [cites cases](#) in Maryland and Kentucky, as well.

Groups such as the Alliance for Conscience Rights have been promoting the Conscience Protection Act to federal lawmakers as a reasonable solution to the dilemma. Last year, the House passed the act and included it into the appropriations bill. The Senate failed to do so, but as long as the Senate does not oppose its inclusion in the spending bill, it would pass.

Congress has until Jan. 19 to vote on a budget or pass another short-term continuing resolution to keep the government from shutting down. Republicans and President Donald Trump favor the act.

"I'm feeling hopeful," said William Cox, president and CEO of [Alliance of Catholic Health Care](#), which represents Catholic hospitals and health care systems in advocacy efforts. He has been in Washington, making Capitol Hill visits and pushing for passage of the Conscience Protection Act. "But you know, the legislative process

is a difficult process, so you just have to get in and line up all your support and hopefully you have sufficient support."



William Cox, president and CEO of the Alliance of Catholic Health Care, listens to speakers during a July 8, 2016, forum on the Conscience Protection Act on Capitol Hill in Washington. (CNS/Bob Roller)

At the heart of the issue is the Hyde-Weldon Amendment, which has been reauthorized every year since 2004 as part of the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, and the Office of Civil Rights' interpretation of the conscience protections that Hyde-Weldon affords.

"The problem with those laws is that they provide no enforcement mechanism, other than to file a complaint with the Office of Civil Rights," said Greg Schleppenbach, associate director for the Secretariat of Pro-Life Activities at the U.S. Conference of Catholic Bishops. "So if an individual's conscience is violated, these laws are violated, and the Office of Civil Rights is petitioned and does nothing about it, the

individual has no recourse."

That's just what happened in California as a result of the 2016 ruling. The case began when Santa Clara University and Loyola Marymount University, both Jesuit institutions, sought to offer health care plans to their employees that did not cover elective abortion services.

When the state ruled in 2014 that they must offer such coverage and the universities ultimately complied, other entities, including the California Catholic Conference of Bishops, filed suit, arguing that the state was discriminating against those who objected to abortion on the grounds that it violated their conscience.

Violations of Hyde-Weldon could, in theory, result in a state losing all federal health, education, and labor funds, but such a draconian penalty has never been enacted and would likely be challenged in court.

Two years later, the Office of Civil Rights ruled that the California complainants were not health care entities and therefore the protections of Hyde-Weldon did not apply.

"We need to keep the Hyde-Weldon Amendment but make it more functional, and strike that balance that it was trying to strike," said Edward Dolejsi, the executive director of the [California Catholic Conference](#). "The government should not use the question of abortion to try to silence people or coerce them."

The Conscience Protection Act would add what's known as a "private right of action" to Hyde-Weldon, allowing complainants to bring a case to federal court if they feel they have not received a satisfactory hearing from the Office of Civil Rights. Currently, no such right exists under the amendment, although it is common for civil rights legislation, according to Schleppenbach.

"No one should be forced to participate in an abortion," said Schleppenbach, who cited a handful of other cases in which health care providers were compelled to perform or study how to perform abortions as a condition of employment, even after citing religious or moral objections. "That's long been overwhelmingly supported by public opinion."

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If it passes, said Cox, Catholic health care providers in California could petition a federal court to find the state in violation of Hyde-Weldon and the Conscience Protection Act. If the court ruled in their favor, the state would, ideally, move to include exemptions to the abortion coverage mandate for those who conscientiously object to it. If it doesn't, the state could begin to lose federal funding.

Cox doesn't want to see it come to that, though.

"We're not interested in financially penalizing a state," he said. "Our only interest is in bringing a state into compliance with federal law."

[Julie Bourbon is a freelance writer based in Washington.]