

118TH CONGRESS
2D SESSION

S. 4524

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 SENATE OF THE UNITED STATES

JUNE 12, 2024

Mr. LANKFORD (for himself, Mr. CRAMER, Mr. DAINES, Mr. HOEVEN, Mr. RUBIO, Mr. RISCH, Mr. MORAN, Mr. CRAPO, Ms. LUMMIS, Mrs. BLACKBURN, Mr. ROUNDS, Mr. HAWLEY, Mr. THUNE, Mr. RICKETTS, Mrs. FISCHER, and Mrs. HYDE-SMITH) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Conscience Protection
5 Act of 2024”.

1 **SEC. 2. FINDINGS.**

2 Congress finds as follows:

3 (1) Thomas Jefferson stated a conviction com-
4 mon to our Nation’s founders when he declared in
5 1809 that “[n]o provision in our Constitution ought
6 to be dearer to man than that which protects the
7 rights of conscience against the enterprises of the
8 civil authority”.

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

19 (A) subsections (b) through (e) of section
20 401 of the Health Programs Extension Act of
21 1973 (42 U.S.C. 300a–7) (commonly known,
22 and referred to in this section, as the “Church
23 Amendments”);

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

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

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

18 (3) Courts have held that certain conscience
19 protection statutes do not provide a “private right of
20 action” for individuals or entities who have been dis-
21 criminated against, thereby leaving victims of dis-
22 crimination unable to defend their own conscience
23 rights in court. At the same time, administrative im-
24 plementation and enforcement of these laws by the
25 Office for Civil Rights of the Department of Health

1 and Human Services have been inconsistent and at
2 times cases are allowed to languish for years or pre-
3 viously enacted enforcement measures are aban-
4 doned or reversed.

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

24 (5) On January 24, 2020, the Office for Civil
25 Rights of the Department of Health and Human

1 Services disavowed its prior findings and issued a
2 notice of violation of the Weldon Amendment to
3 California. After the State's continued noncompli-
4 ance with the Weldon Amendment, the Centers for
5 Medicare & Medicaid Services, on December 16,
6 2020, announced the disallowance of \$200,000,000
7 per quarter in Federal funds to California beginning
8 in the first quarter of 2021.

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

20 (7)(A) On August 28, 2019, the Office for Civil
21 Rights of the Department of Health and Human
22 Services under the Trump Administration issued a
23 notice of violation against the University of Vermont
24 Medical Center for violation of the Church Amend-
25 ments after it was found to have scheduled approxi-

1 mately 10 nurses who had registered conscience ob-
2 jections to abortion to assist with approximately 20
3 abortion procedures and for maintaining policies
4 that explicitly required employees with conscience
5 objections to participate in procedures with which
6 they disagreed to “ensure that patient care is not
7 negatively impacted”. Such practices were found to
8 be part of an “ongoing pattern, practice, and policy
9 of discriminating against health care providers who
10 believe that the performance, or the assistance in the
11 performance, of abortions is contrary to their reli-
12 gious beliefs or moral convictions”.

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

18 (C) On July 30, 2021, the Department of Jus-
19 tice under the Biden Administration voluntarily dis-
20 missed the case, without any binding settlement or
21 requirement that the University of Vermont Medical
22 Center remedy its unlawful policies or make restitu-
23 tion to the employees whose rights it violated.

24 (8) On May 21, 2019, the Secretary of Health
25 and Human Services issued the final rule entitled

1 “Protecting Statutory Conscience Rights in Health
2 Care; Delegations of Authority” (84 Fed. Reg.
3 23170; May 21, 2019) to implement 25 Federal con-
4 science protection provisions governing programs
5 funded under the Department of Health and Human
6 Services and provide mechanisms to enforce con-
7 science laws to ensure that the government and gov-
8 ernment-funded entities are not unlawfully discrimi-
9 nating against health care entities. Despite this reg-
10 ulation providing for enforcement of laws passed by
11 Congress, the rule faced numerous legal challenges
12 and was vacated.

13 (9) On January 11, 2024, the Department of
14 Health and Human Services published a final rule
15 that fails to equip the Department with the tools
16 necessary for effective enforcement of Federal statu-
17 tory protections of rights of conscience.

18 (10) Congress has acted numerous times to ex-
19 pand access to health care and has also acted nu-
20 merous times to provide unqualified statutorily pro-
21 tected rights of conscience to individuals and entities
22 in certain circumstances. A health care entity’s deci-
23 sion not to participate in an abortion, assisted sui-
24 cide, procedures that can result in sterilization, or
25 other interventions erects no barrier to those legally

1 seeking to perform or undergo such interventions
2 elsewhere.

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

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

14 (13) On July 13, 2022, the Department of
15 Health and Human Services issued guidance to re-
16 tail pharmacies in the United States. Such guidance
17 purported to address their obligations under Federal
18 nondiscrimination laws, but in actuality orders phar-
19 macies to stock and dispense abortion pills despite
20 the fact that pharmacies and pharmacists have a
21 right to not violate their conscience by participating
22 in abortion under existing law.

23 (14) Conscience protections pose no conflict
24 with other Federal laws, such as the law requiring
25 stabilizing treatment for a “pregnant woman . . . or

1 her unborn child” when either needs emergency care
 2 (Emergency Medical Treatment and Active Labor
 3 Act). As previous Administrations have said, these
 4 areas of law have operated side by side for many
 5 years and both should be fully enforced (76 Fed.
 6 Reg. 9968–77 (2011) at 9973).

7 (15) Reaffirming longstanding Federal policy
 8 on conscience rights and providing a private right of
 9 action in cases where it is violated allows long-
 10 standing and widely supported Federal laws to work
 11 as intended.

12 **SEC. 3. PROHIBITING DISCRIMINATION AGAINST HEALTH**
 13 **CARE ENTITIES THAT DO NOT PARTICIPATE**
 14 **IN ABORTION.**

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

18 **“SEC. 245A. PROHIBITING DISCRIMINATION AGAINST**
 19 **HEALTH CARE ENTITIES THAT DO NOT PAR-**
 20 **TICIPATE IN ABORTION.**

21 “(a) IN GENERAL.—Notwithstanding any other law,
 22 the Federal Government, and any individual or entity that
 23 receives Federal financial assistance, including any State
 24 or local government, may not penalize, retaliate against,
 25 or otherwise discriminate against a health care entity on

1 the basis that such health care entity does not or declines
2 to—

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

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

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

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

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

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

17 “(3) to prevent an accrediting agency, the Fed-
18 eral Government, or a State or local government
19 from establishing standards of medical competency
20 applicable only to those who have knowingly, volun-
21 tarily, and specifically elected to perform abortions,
22 or from enforcing contractual obligations applicable
23 only to those who, as part of such contract, know-
24 ingly, voluntarily, and specifically elect to provide
25 abortions;

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

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

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

9 “(1) FEDERAL FINANCIAL ASSISTANCE.—The
10 term ‘Federal financial assistance’ means Federal
11 payments to cover the cost of health care services or
12 benefits, or other Federal payments, grants, or loans
13 to promote or otherwise facilitate health-related ac-
14 tivities.

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

17 “(A) an individual physician, health care
18 assistant, nurse, pharmacist, health researcher,
19 or other health care personnel;

20 “(B) a hospital, laboratory, pharmacy,
21 health system, or other health care or medical
22 research facility or organization (including a
23 party to a proposed merger or other collabo-
24 rative arrangement relating to health services,
25 and an entity resulting therefrom);

1 “(C) a provider-sponsored organization, an
2 accountable care organization, or a health
3 maintenance organization;

4 “(D) a social services provider that pro-
5 vides or authorizes referrals for health care
6 services;

7 “(E) a program of training or education in
8 the health professions or medical research, a
9 participant in such a program, or any individual
10 applying or otherwise aspiring to participate in
11 such a program;

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

14 “(G) a health care sharing ministry;

15 “(H) a health insurance plan, including
16 group, individual, or student health plans, or a
17 sponsor or administrator thereof; or

18 “(I) any other health care organization,
19 program, facility, or plan.

20 “(3) STATE OR LOCAL GOVERNMENT.—The
21 term ‘State or local government’ includes every
22 agency and other governmental unit and subdivision
23 of a State or local government, if such State or local
24 government, or any agency or governmental unit or

1 subdivision thereof, receives Federal financial assist-
2 ance.”.

3 **SEC. 4. STRENGTHENING ENFORCEMENT OF FEDERAL**
4 **CONSCIENCE LAWS.**

5 Title II of the Public Health Service Act (42 U.S.C.
6 202 et seq.), as amended by section 3, is further amended
7 by inserting after section 245A the following:

8 **“SEC. 245B. ADMINISTRATIVE ENFORCEMENT OF FEDERAL**
9 **CONSCIENCE LAWS.**

10 “(a) REGULATIONS.—

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

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

17 “(A) Sections 245, 245A, 399M(d), and
18 520E(f) of this Act.

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

23 “(C) Any of subsections (b) through (e) of
24 section 401 of the Health Programs Extension
25 Act of 1973 (commonly known as the ‘Church

1 Amendments’), only with respect to an objection
2 based on a religious belief or moral conviction.

3 “(D) Section 507(d) of the Departments of
4 Labor, Health and Human Services, and Edu-
5 cation, and Related Agencies Appropriations
6 Act, 2023 (division H of the Consolidated Ap-
7 propriations Act, 2023 (Public Law 117–328))
8 (commonly known as the ‘Weldon Amendment’)
9 and any subsequent substantially similar provi-
10 sion in an appropriations Act, to the extent ad-
11 ministered by the Secretary.

12 “(E) Section 209 of the Departments of
13 Labor, Health and Human Services, and Edu-
14 cation, and Related Agencies Appropriations
15 Act, 2023 (division H of the Consolidated Ap-
16 propriations Act, 2023 (Public Law 117–328))
17 and any subsequent substantially similar provi-
18 sion in an appropriations Act, to the extent ad-
19 ministered by the Secretary.

20 “(F) Clauses (i) and (ii) of paragraph
21 (1)(A) of section 1303(b) of the Patient Protec-
22 tion and Affordable Care Act (only with respect
23 to a determination not to provide coverage of
24 abortion), and paragraph (4) of such section.

1 “(G) Section 1411(b)(5)(A) of the Patient
2 Protection and Affordable Care Act (other than
3 with respect to an exemption as an Indian or a
4 hardship exemption) and section
5 5000A(d)(2)(A) of the Internal Revenue Code
6 of 1986.

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

9 “(I) Sections 1122(h), 1162, 1821,
10 1861(e), 1861(y)(1), and 1861(ss) of the Social
11 Security Act, and the first paragraph of the
12 matter following section 1902(a)(87)(D) of such
13 Act, each of such provisions only with respect
14 to protections for religious nonmedical health
15 care institutions.

16 “(J) Sections 1852(j)(3)(B), 1866(f)(4),
17 1902(w)(3), 1902(w)(5), 1907,
18 1928(c)(2)(B)(ii) (with respect to a religious or
19 other exemption), 1932(b)(3)(B), and 2012(b)
20 of such Act.

21 “(K) Section 4206(c) of the Omnibus
22 Budget Reconciliation Act of 1990.

23 “(L) Section 7 of the Assisted Suicide
24 Funding Restriction Act of 1997.

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

3 “(N) Section 301(d) of the United States
4 Leadership Against HIV/AIDS, Tuberculosis,
5 and Malaria Act of 2003 to the extent adminis-
6 tered by the Secretary.

7 “(O) The third sentence of section
8 20(a)(5) of the Occupational Safety and Health
9 Act of 1970.

10 “(P) Section 104(f)(1) of the Foreign As-
11 sistance Act of 1961 (commonly known as the
12 ‘Helms Amendment’), and any provision of an
13 appropriations Act or other Federal law that re-
14 states or incorporates by reference the protec-
15 tions of such section, to the extent administered
16 by the Secretary.

17 “(Q) The ninth proviso under the heading
18 ‘Global Health Programs’ under the heading
19 ‘Funds Appropriated to the President’ under
20 title III of the Department of State, Foreign
21 Operations, and Related Programs Appropria-
22 tions Act, 2023 (division K of the Consolidated
23 Appropriations Act, 2023 (Public Law 117–
24 328)) and any subsequent substantially similar

1 provision in an appropriations Act to the extent
2 administered by the Secretary.

3 “(R) Any other provision of law protecting
4 the exercise of conscience or religious freedom
5 under programs or activities funded, adminis-
6 tered, or conducted by the Department of
7 Health and Human Services.

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

11 “(1) to receive complaints alleging a violation of
12 any provision of law described in subsection (a)(2);
13 and

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

17 “(c) ENFORCEMENT.—

18 “(1) IN GENERAL.—The Secretary shall, as
19 permitted under law (including the Constitution of
20 the United States), induce compliance of an indi-
21 vidual or entity, including a State or local govern-
22 ment, failing to comply with any provision of law de-
23 scribed in subsection (a)(2), by terminating, in whole
24 or in part, any Federal financial assistance provided
25 by the Secretary to such individual or entity.

1 “(2) REFERRALS.—The Secretary shall, as the
 2 Secretary determines necessary for inducing compli-
 3 ance with a provision described in paragraph (1),
 4 refer a violation of such a provision to the Attorney
 5 General for a civil action in accordance with section
 6 245C.

7 **“SEC. 245C. CIVIL ACTION FOR VIOLATIONS OF FEDERAL**
 8 **CONSCIENCE LAWS.**

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

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

13 “(1) DESIGNATED VIOLATION.—The term ‘des-
 14 ignated violation’ means an actual or threatened vio-
 15 lation of any provision of law described in section
 16 245B(a)(2).

17 “(2) QUALIFIED PARTY.—The term ‘qualified
 18 party’ means—

19 “(A) the Attorney General; or

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

24 “(c) ADMINISTRATIVE REMEDIES NOT REQUIRED.—
 25 An action under this section may be commenced, and relief

1 may be granted, without regard to whether the party com-
2 mencing the action has sought or exhausted any available
3 administrative remedies.

4 “(d) DEFENDANTS IN ACTIONS UNDER THIS SEC-
5 TION MAY INCLUDE GOVERNMENTAL ENTITIES AS WELL
6 AS OTHERS.—

7 “(1) IN GENERAL.—An action under this sec-
8 tion may be maintained against any individual or en-
9 tity receiving Federal financial assistance (as defined
10 in section 245A(c)), including a State governmental
11 entity. Relief in an action under this section may in-
12 clude money damages even if the defendant is a gov-
13 ernmental entity.

14 “(2) DEFINITION.—For the purposes of this
15 subsection, the term ‘State governmental entity’
16 means a State, a local government within a State,
17 and any agency or other governmental unit or sub-
18 division of a State, or of such a local government.

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

21 “(1) all appropriate relief, including injunctive
22 relief, declaratory relief, and compensatory damages
23 to prevent the occurrence, continuance, or repetition
24 of the designated violation and to compensate for
25 losses resulting from the designated violation; and

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

3 **SEC. 5. SEVERABILITY.**

4 If any provision of this Act or an amendment made
5 by this Act, or the application of such a provision or
6 amendment to any individual, entity, government, or cir-
7 cumstance, is held to be unconstitutional, the remainder
8 of this Act and the amendments made by this Act, and
9 the application of such provision or amendment to any
10 other individual, entity, government, or circumstance,
11 shall not be affected.

○