



The Federal Refusal Clause: Endangering Women's Health

The Federal Refusal Clause, also known as the Weldon amendment, is a wide-sweeping and controversial federal law that threatens women's access to reproductive-health care by blocking federal, state, and local governments from enforcing their own pro-choice laws and contracts. First enacted as part of the FY'05 Omnibus Appropriations bill—even though the Senate Appropriations Committee did not include it in its bill and the Senate never voted on the language—the Federal Refusal Clause prohibits federal, state, and local governments from “discriminating” against a health-care entity that “does not provide, pay for, provide coverage of, or refer for abortions.”¹ In other words, it explicitly grants a broad variety of health-care organizations—such as hospitals and insurance companies—the right to refuse to provide, refer for, or pay for abortion services. This provision has been included in each appropriations bill since 2005.²

Supporters of the Federal Refusal Clause wrongly argue that the law is needed to protect individuals and health-care organizations that oppose abortion. However, no federal law forces individuals to provide abortion care. In fact, the 1973 Church amendment explicitly protects individuals who object to providing abortion care based on religious beliefs or moral convictions.³ Similarly, no federal law requires hospitals to provide abortion services, except in a medical emergency.

Moreover, 47 states and the District of Columbia allow certain individuals and/or organizations to refuse to provide women specific reproductive health services, information, or referrals.⁴ But the Federal Refusal Clause goes much further: it allows a wide range of health-care corporations—or a few board members controlling the company's policy, whether for religious, political, or any other reasons—to prohibit doctors from providing care or giving information to their patients regardless of *the individual doctor's* religion, morals, or values. In that sense, the Federal Refusal Clause actually works in some cases to trample the conscience rights of pro-choice doctors in providing care to patients who need it.

The Federal Refusal Clause:

- *Gives health-care corporations license to interfere with a doctor's ability to provide comprehensive health information to patients, thus undermining the doctor-patient relationship.*
 - Without question, a delicate balance must be struck between the rights of patients and providers. Sadly, however, this law offers no balance—instead permitting a

corporation's "conscience" to trump a doctor's or woman's. Regardless of whether a health-care company chooses to provide abortion services, the procedure is a legal medical option and patients have a right to this information. Without access to full information, patients cannot give genuinely informed consent—a bedrock principle of medical care.

- This law gives health-care corporations—hospitals, provider-sponsored organizations, HMOs, community health centers, health-insurance plans, or any other kind of health-care facility, organization or plan—license to stifle communication between doctors and patients, threatening women's ability to obtain information about how and where to obtain abortion services. Because such laws allow politicians and corporations to dictate the content of private conversations between doctors and patients, Congress has voted for protections against these types of gag rules for other health-care services.⁵ Regardless of one's views on the question of legal abortion, we should all agree that no patient should be denied basic, factual information about his or her medical options.

- *Jeopardizes women's lives.*
 - In addition to interfering with the doctor-patient relationship and threatening women's access to comprehensive health information, the Federal Refusal Clause allows hospitals to believe—wrongly—that they can turn away *any* woman seeking abortion care without repercussions, even when the woman's life is in jeopardy. While the Emergency Medical Treatment and Active Labor Act, known as EMTALA, ensures that a woman who needs abortion care in an emergency won't be turned away,⁶ the Federal Refusal Clause gives rogue hospital executives or agents the false belief that they can deny these women treatment.

- *Conflicts with federal Title X guidelines that ensure women receive referrals when requesting information about all their medical options.*
 - The Federal Refusal Clause could prohibit the federal government from enforcing *its own* requirement that Title X-funded family-planning clinics provide a woman facing an unintended pregnancy with an abortion referral when she requests one. Rogue clinics may believe they can stifle communication between physicians and patients without repercussion, thereby undermining the doctor-patient relationship and leaving low-income women facing unintended pregnancies without critical information about their medical options. Moreover, because women of color, who disproportionately work in low-wage jobs that do not offer benefits,⁷ turn at higher rates to public programs such as Title X for affordable health care,⁸ the Federal Refusal Clause disproportionately threatens access to health-care services for women of color.

- ***Restricts low-income women's access to necessary reproductive-health care.***
 - Federal law, under the Hyde amendment, requires states to provide Medicaid coverage for abortion services in cases of rape, incest, or when a pregnancy endangers a woman's life.⁹ In addition, some states cover abortion services in a wider range of circumstances. The Federal Refusal Clause, however, could stop states from ensuring that Medicaid managed care plans pay for abortion care in these circumstances. In that scenario, for instance, a woman in need of abortion services could have the technical legal right to the procedure, but no place in the state to receive it.

- ***Imposes barriers to abortion care, especially for low-income women and women of color.***
 - When women are denied medical services from one provider but still seek that care, they are left with the task of finding treatment elsewhere. Low-income women and women of color already face numerous barriers to getting health-care services that make it particularly burdensome for them to find alternate providers, should their primary provider refuse to offer health-care services. A study by the Kaiser Family Foundation found that low-income women face twice as much difficulty as other women in obtaining the flexible work schedules, transportation, and child care necessary to access health-care services for themselves.¹⁰ Another study found that "[w]omen of color, African American, Latina, and American Indian and Alaska Native women, in particular, face greater barriers and challenges in access to care, which often translate into lower use of recommended health services."¹¹ As such, the Federal Refusal Clause disproportionately hinders access to health care for low-income women and women of color.

- ***Interferes with states' efforts to protect reproductive-health-care access.***
 - If interpreted as its proponents urge, the law could effectively overrule state constitutions by federal legislative fiat, violating basic principles of federalism. An example in Alaska is illuminating. The law's authors claim that the Federal Refusal Clause would overrule *Valley Hospital v. Mat-su Coalition for Choice*, a case where the Alaska Supreme Court concluded that the state constitution requires that quasi-public hospitals provide abortion services. Interestingly, however, the case remains unchallenged.¹²
 - The Federal Refusal Clause could preclude states and local governments from enforcing their own health-care certification and licensing requirements in the area of abortion. When nonsectarian hospitals merge with Catholic hospitals, frequently they are pressured to adopt the rules governing Catholic hospitals, which are laden with policies forbidding various types of services.¹³ In deciding whether to approve a hospital merger, a state might no longer consider whether the newly merged hospital system

would end women's access to full reproductive-health services, leaving even more communities without access to abortion care.

- Proponents of the Federal Refusal Clause tried to use it to block California's efforts to protect reproductive-health-care access. California law requires the provision of basic health-care services and the state constitution prohibits health-insurance plans from discriminating against women who choose abortion services. The California Department of Managed Health Care interprets the law as prohibiting health-insurance plans from limiting or excluding coverage for abortion services.¹⁴ However, in an attempt to overrule this law, Catholic bishops and anti-choice groups filed complaints with the U.S. Department of Health and Human Services' Office for Civil Rights (OCR), alleging a Federal Refusal Clause violation.¹⁵ In June 2016, the OCR issued a decision upholding California's policy.¹⁶ The administration explained that the Federal Refusal Clause does not apply to any of the complainants; moreover, no California insurance companies – to which the federal law could apply – object to covering abortion care.

- *Costs states billions of dollars through the loss of all health, education, and labor-related funds if they violate the misguided law.*
 - The Federal Refusal Clause's draconian enforcement mechanism would penalize a state with not just the loss of all family-planning money—or even the loss of all health money—but the loss of *all* health, education, and labor-related funds. This would undermine states' ability to improve their schools, aid unemployed workers, collect child support, provide child care to low-income parents, and vaccinate children. The threat of such devastating consequences is bound to have a chilling effect on those charged with enforcing laws protecting women's reproductive rights.

The public overwhelmingly *opposes* refusal laws for corporations.

Research shows that the public strongly opposes efforts to grant health-care companies the right to refuse to provide abortion services or referrals for any reason, including on the basis of religious objections.

- *Seventy-six percent* of the public oppose exempting hospitals from providing medical services on religious grounds.¹⁷

- *Eighty-three percent* of Americans believe that “if a hospital receives government funds, it should be required to provide basic, legal medical services, regardless of the hospital's religious objections.”¹⁸

- *Eighty-nine percent* of the public oppose allowing insurance companies to refuse to pay for medical services on religious grounds.¹⁹

- *Eighty-five percent* of women believe that a Catholic hospital receiving government funds should be required to allow doctors to provide any legal, medically sound service he or she decides is necessary.²⁰

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Notes:

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- ¹ FY'05 Consolidated Appropriations Act, Pub. L. No. 108-447, 118 Stat. 2809 (Dec. 8, 2004).
 - ² FY'06 Departments of Labor, Health, and Human Services, and Education Appropriations Act, Pub. L. No. 109-149 (December 30, 2005); Revised Continuing Appropriations Resolution, 2007, Pub. L. No. 110-5 (February 15, 2007); Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, § 508d, 121 Stat. 1844, 2209 (2007); Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009, Public Law 110-329, Div. A section 101, 122 Stat. 3574, 3575 (September 2008); Consolidated Appropriations Act, 2010, Pub. L. No. 111-117 (December 2009); Department of Defense and Full-Year Continuing Appropriations Act, 2011, Pub. L. No. 112-10 (April 2011); Consolidated Appropriations Act, 2012, Pub. L. No. 112-74 (December 2011); Consolidated Appropriations Act, Pub.L. No. 112-175 (September 2012); Department of Defense, Military Construction and Veterans Affairs, and Full Year Continuing Appropriations Act, 2013, Pub.L. 113-6 (March 2013), Continuing Appropriations Act, 2014, Pub.L. No. 113-46 (October 2013).
 - ³ Church amendment to the Public Health Service Extension Act of 1973, Pub. L. No. 93-45, Tit. IV, § 401, 87 Stat. 95 (codified at 42 U.S.C.A. § 300a-7).
 - ⁴ NARAL Pro-Choice America & NARAL Pro-Choice America Foundation, *Who Decides? The Status of Women's Reproductive Rights in the United States* (26th ed. 2017), at www.WhoDecides.org.
 - ⁵ Bipartisan Patient Protection Act (H.R.2563 and S.1052), 107th Congress.
 - ⁶ Emergency Medical Treatment and Active Labor Act, 42 U.S.C. § 1395dd (1986).
 - ⁷ Kaiser Family Foundation, *Women and Health Care in the Early Years of the Affordable Care Act: Key Findings from the 2013 Kaiser Women's Health Survey*, at 12 (May 2014), at <http://kaiserfamilyfoundation.files.wordpress.com/2014/05/8590-women-and-health-care-in-the-early-years-of-the-affordable-care-act.pdf> (last visited Nov. 19, 2015).
 - ⁸ U.S. Census Bureau, *State & County QuickFacts*, at <http://quickfacts.census.gov/qfd/states/00000.html> (last visited Nov. 19, 2015); National Family Planning & Reproductive Health Association, *Title X: An Introduction to the Nation's Family Planning Program* (Apr. 2014), at <http://www.nationalfamilyplanning.org/document.doc?id=1317> (last visited Nov. 25, 2015).
 - ⁹ Hyde Amendment of 1976, Pub. L. 94-439, § 209.
 - ¹⁰ Kaiser Family Found., *Women and Health Care: A National Profile* (July 2005), at <http://kaiserfamilyfoundation.files.wordpress.com/2013/01/women-and-health-care-a-national-profile-key-findings-from-the-kaiser-women-s-health-survey.pdf>, at 48 (last visited Nov. 19, 2015).

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- ¹¹ Kaiser Family Found., *Putting Women's Health Care Disparities on the Map: Examining Racial and Ethnic Disparities at the State Level* (June 2009), at <http://kaiserfamilyfoundation.files.wordpress.com/2013/01/7886.pdf>, at 45 (last visited Nov. 19, 2015).
- ¹² *Valley Hosp. Ass'n., Inc. v. Mat-Su Coalition for Choice*, 948 P.2d 963 (Alaska, 1997).
- ¹³ Catholics for a Free Choice (CFFC), *Caution: Catholic Health Restrictions May be Hazardous to your Health*, at 4 (1999); Mergerwatch & Family Planning Advocates of New York State, *No Strings Attached: Public Funding of Religiously-Sponsored Hospitals in the United State*, at 21-25 (2002).
- ¹⁴ Michelle Rouillard, *Limitations or Exclusions of Abortion Services*, Aug. 22, 2014, at <https://www.dmhc.ca.gov/Portals/0/082214letters/abc082214.pdf> (last visited Nov. 19, 2015).
- ¹⁵ James F. Sweeney, *Civil Rights Complaint on behalf of the California Catholic Conference Against the California Department of Managed Health Care*, Sept. 30, 2014, at http://www.cacatholic.org/sites/default/files/files/CCC_Complaint_Letter.pdf (last visited Nov. 19, 2015).
- ¹⁶ U.S. Department of Health and Human Services Office for Civil Rights, OCR Transaction Numbers 14-193604, 15-193782, 15-195665 (June 21, 2016).
- ¹⁷ ACLU Reproductive Freedom Project, *American Civil Liberties Union (ACLU), Religious Refusals and Reproductive Rights*, at 20 (2002).
- ¹⁸ ACLU Reproductive Freedom Project, *American Civil Liberties Union (ACLU), Religious Refusals and Reproductive Rights*, at 20 (2002).
- ¹⁹ ACLU Reproductive Freedom Project, *American Civil Liberties Union (ACLU), Religious Refusals and Reproductive Rights*, at 20 (2002).
- ²⁰ CFFC, *Religion, Reproductive Health and Access to Services: A National Survey of Women* (poll conducted by Belden Russonello & Stewart) (Apr. 2000).