



**NARAL**  
Pro-Choice America

### **Fast Facts about the Federal Refusal Clause**

**FACT: The federal government does not force hospitals or medical professionals to provide abortion care against their will.**

- According to the 1973 Church amendment, individuals and corporations are free to decline to provide abortion services. Further, hospitals and other health providers may choose not to provide abortion care, except when a woman's life is at risk, and most states permit certain medical personnel, health facilities, and/or health-care companies to refuse to provide abortion care.<sup>1</sup>
- Yet, the Federal Refusal Clause, also known as the Weldon amendment, goes much further: it allows a wide range of health-care corporations, such as hospitals and insurance companies—or a few board members controlling company policy, whether for religious, political, or any other reasons—to block doctors' ability to give patients comprehensive reproductive-health care or information, regardless of the individual doctor's or patient's religion, morals, or values.<sup>2</sup> In that sense, the Federal Refusal Clause actually works in some case to trample the conscience rights of pro-choice doctors in providing care to patients who need it.

**FACT: The Federal Refusal Clause is a sweeping exemption from laws and regulations that ensure that women have access to abortion services.**

- Far from constituting a simple "conscience clause," as sponsors claim, the Federal Refusal Clause is a permission slip from Congress for certain companies to refuse to abide by the same laws that govern other health-care providers. Because of this law, corporations are free to stifle communication between doctors and patients, threatening women's ability to get information about how and where to obtain abortion services.

**FACT: This law puts the rights of corporate health conglomerates above those of women and doctors, interfering with the principle of informed consent.**

- 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.

**FACT: The Federal Refusal Clause intentionally 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 will 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.<sup>3</sup>
- Proponents of the Federal Refusal Clause have unsuccessfully tried to use it to interfere with states’ rights in California. 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.<sup>4</sup> However, in an attempt to overrule state law, Catholic bishops and other 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.<sup>5</sup> In June of 2016, the OCR issued a decision upholding California’s policy guaranteeing insurance coverage of abortion in the state, and finding that the complaints lacked merit.<sup>6</sup> 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.
- Additionally, 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.<sup>7</sup> 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.

**FACT: The public overwhelmingly opposes the Federal Refusal Clause.**

- Seventy-six percent of Americans oppose exempting hospitals from providing medical services on religious grounds.<sup>8</sup>

- 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.”<sup>9</sup>
- Eighty-nine percent of the public opposes allowing insurance companies to refuse to pay for medical services on religious grounds.<sup>10</sup>
- 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.<sup>11</sup>

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**Notes:**

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<sup>1</sup> 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).

<sup>2</sup> FY’05 Consolidated Appropriations Act, Pub. L. No. 108-447, 118 Stat. 2809 (Dec. 8, 2004); Continued in FY’06 Departments of Labor, Health, and Human Services, and Education Appropriations Act, Pub. L. No. 109-149 (Enacted December 30, 2005); Revised Continuing Appropriations Resolution, 2007, Pub. L. No. 110-5 (Enacted 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), Pub.L. 113-6 (March 2013), Continuing Appropriations Act, 2014, Pub.L. No. 113-46, (October 2013).

<sup>3</sup> *Valley Hospital v. Mat-su Coalition for Choice*, 948 P.2d 963 (Alaska 1997).

<sup>4</sup> 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).

<sup>5</sup> 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](http://www.cacatholic.org/sites/default/files/files/CCC_Complaint_Letter.pdf).

<sup>6</sup> U.S. Department of Health and Human Services Office for Civil Rights, OCR Transaction Numbers 14-193604, 15-193782, 15-195665 (June 21, 2016), at <https://adflegal.blob.core.windows.net/web-content-dev/docs/default-source/documents/resources/media-resources/cdmhc-investigation-closure-letter.pdf?sfvrsn=2>.

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- <sup>7</sup> 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).
- <sup>8</sup> American Civil Liberties Union (ACLU) Reproductive Freedom Project, *American Civil Liberties Union (ACLU), Religious Refusals and Reproductive Rights*, at 20 (2002).
- <sup>9</sup> ACLU Reproductive Freedom Project, *American Civil Liberties Union (ACLU), Religious Refusals and Reproductive Rights*, at 20 (2002).
- <sup>10</sup> ACLU Reproductive Freedom Project, *American Civil Liberties Union (ACLU), Religious Refusals and Reproductive Rights*, at 20 (2002).
- <sup>11</sup> CFFC, *Religion, Reproductive Health and Access to Services: A National Survey of Women* (poll conducted by Belden Russonello & Stewart) (Apr. 2000).