

Remarks by Alliance *for* Conscience Rights Director William J. Cox Energy and Commerce Committee Forum on Conscience Rights

July 8, 2016

Thank you, Mr. Chairman. My name is Bill Cox, and I am here in two capacities: as the director of the Alliance *for* Conscience Rights, a national coalition of Catholic health care systems formed to address growing governmental discrimination against faith-based health care providers; and as CEO of the Sacramento-based Alliance of Catholic Health Care, which represents California's 48 Catholic hospitals.

The nub of this morning's conversation is about whether federal civil rights statutes, such as the Weldon Amendment, should include a private right of action. This would give the victims of private and governmental discrimination standing to adjudicate their claims in federal court.

I'll briefly make four points: **First**, every federal civil rights law includes a private right of action, including the Administration's new health care non-discrimination rule. The Weldon civil rights statute should include one as well. As a matter of fairness, when protecting a civil right, every American deserves their day in court. **Second**, this Congress has a duty to add a private right of action to Weldon, given that the Office for Civil Rights just stated that the Department of Justice believes the current Weldon remedy – the rescission of a state's Labor-H funds – is

unconstitutional under the Supreme Court's *NFIB v. Sebelius* ruling. Thus, the OCR and DoJ have basically admitted that the executive branch will never enforce Weldon.

Third, a Weldon private right of action would provide an alternative to rescinding a state's federal health, education and other funds — billions of dollars that support programs for those who are struggling the most. We're not interested in financially penalizing states that violate Weldon – our only interest is in bringing them into compliance with federal law. All we're seeking is the legal status quo (Weldon) with an additional remedy (a private right of action). **Fourth**, the OCR's recent refusal to uphold Weldon revealed another possible enforcement defect: health care insurers that are covered by Weldon, but ignore their clients' conscience rights. California's health plans acceded to the state's abortion mandate and, therefore, do not believe they can honor their clients' sincerely held moral convictions. Weldon should be clarified to ensure that purchasers of health insurance, who object to covering elective abortions, are never required to do so. Without that clarity, states, such as California and New York, will continue to discriminate against employers and health care providers that choose not to cover, pay for or provide elective abortions; and other states will inevitably follow their lead.

In conclusion, those opposed to enforcing Weldon allege two things: **First**, the growth of Catholic health care in states, such as Washington – where Catholic hospitals provide 40% of the acute care – is reducing access to abortion; and **second**, Catholic hospitals' moral beliefs result in substandard emergency care to pregnant women. In respect to the first allegation, in 2013 the State of Washington's Healthcare Research Group released a study showing that there has been no diminishment in access to abortion pursuant to the growth of Catholic hospitals in that state. In respect to the

second allegation, numerous lawsuits claiming Catholic moral beliefs result in injury to patients have not withstood even preliminary challenges in the courts. And no state or federal regulatory authority has ever cited a Catholic hospital for providing substandard emergency care to a pregnant woman. If patients were actually injured in a hospital – any hospital – damages and malpractice claims would be filed immediately. In the instances alleged in these suits, none have been filed. The injury allegations made in them are not anchored in fact, but asserted solely for political reasons to tarnish Catholic hospitals’ sterling brand. Finally, and notwithstanding claims to the contrary, Catholic moral principles do not preclude Catholic hospitals from providing emergency contraception when treating rape victims. For example, in California 11 Catholic-affiliated hospitals are state-designated rape trauma centers and/or Sexual Assault Response Team (SART) sites.

Mr. Chairman, our nation is strengthened by faith-based hospitals that have been delivering care, consistent with their core convictions, for well over 150 years. This Congress needs to clarify and strengthen Dr. Weldon’s amendment to enable them to continue serving their patients and communities, free from governmental compulsion to violate their moral beliefs.

Thank you.