Americans United for Separation of Church and State
ALABAMA CHAPTER

February 22, 2016

Representative April Weaver
Chair, House Health Committee
State House #417-A
11 S Union St
Montgomery, AL 36130

Representative Mike Millican
Vice-Chair, House Health Committee
State House #427-F
11 S Union St
Montgomery, AL 36130

Re: Oppose HB 159 Because It Endangers Patients

Dear Chair Weaver and Vice Chair Millican:

On behalf of its Alabama members and chapter, Americans United for Separation of Church and State urges you to oppose HB 159, a bill that would allow healthcare providers to refuse to perform or participate in health care services that are contrary to their religious or ethical convictions. Passage of such a broad exemption for healthcare providers—with no consideration of the effect such exemption would have on patients—creates a grave threat to patients' healthcare. When religion is used to justify the denial of healthcare, patients' health and well-being are jeopardized and they can suffer catastrophic harm.

This Bill Sanctions Discrimination

Although this bill purports to prevent discrimination against healthcare service providers it in fact provides special treatment for religious groups at the expense of patients' health. Individual claiming moral objections could claim that any attempt by an employer to abrogate a refusal in an effort to protect patients is prohibited "discrimination" against that employee. This bill shields medical providers, while failing to prevent discrimination against patients seeking needed medical services. Moreover, this bill creates a defense to civil and criminal liabilities for individuals or institutions that decline to treat a patient. Patients harmed by the refusal of services—and loved ones of patients who die or are harmed as a result of the refusal to provide services—may have no recourse. Prosecutors may be prohibited from bringing charges on what would otherwise be a clear violation of the law.

This Broad Exemption Would Cause Real Harm to Patients

The bill provides an extremely broad definition of "health care provider." It includes a person who even just "furnishes or assists in the furnishing of health care services" and applies to a range of health care services. With such broad definitions, passage of HB 159 would certainly put patient health at risk. Examples of real harm include the following:

- Based on religious beliefs, a doctor or nurse could refuse to administer a medically necessary procedure for women who had a miscarriage or stillbirth, because the definition of "abortion" is not limited to voluntary termination of pregnancy.

- A woman who is experiencing an ectopic (tubal) pregnancy might call a public clinic and describe her symptoms to get medical advice. A receptionist who recognizes the symptoms as an ectopic pregnancy but is morally opposed to the use of methotrexate—a drug commonly used to treat ectopic pregnancies—could tell the patient that there are no available appointments, claiming that scheduling the appointment requires her to "participate" in the dispensation of a drug she believes to be an abortifacient even though the patient's medical condition renders the pregnancy unviable and may result in the woman's death if untreated.

- An employee who believes the morning-after pill is an abortifacient could withhold information about the drug from a victim of rape or incest seeking care at a public clinic or hospital. Because many women do not know about the drug, the victim of rape or incest could leave the clinic or hospital never knowing that she could have lowered her risk of unintended pregnancy resulting from this violent act.

- Public health clinics may refuse to counsel women about, prescribe, or dispense birth control pills. And many women have nowhere else to seek healthcare, thus such refusal would have the effect of cutting off their access to birth control pills altogether.

The Notice Requirement Does Not Lift the Burden on Patients

Some may argue that these burdens are lifted because health care providers must make their religious objections known in writing. But it does not. HB 159 only requires an employee to provide at least 24 hours notice prior to a service or procedure, leaving little time for employers to prepare. Also, is unclear as to how an employer would respond if all health care employees have provided written objections to providing similar medical services. Second, this notice does not help the patients, as they will still have no notice that they may still be refused proper medical care.

The Broad Religious Exemption Violates the First Amendment of the U.S. Constitution

Although the government may offer religious accommodations even when it is not required to do so by the Constitution,[1] the state's ability to provide religious accommodations is not unlimited: "At some point, accommodation may devolve into an unlawful fostering of religion."[2] In *Texas Monthly, Inc. v. Bullock*,[3] the Supreme Court explained that legislative exemptions for religious organizations that exceed free exercise requirements will be upheld only when they do not impose "substantial burdens on nonbeneficiaries" or they are designed

[1] Of course, in some instances exemptions may be constitutionally permissible but unwise public policy.
[2] *Corporation of the Presiding Bishop v. Amos,* 483 U.S. 327, 334-35 (1986) (internal quotation marks omitted).
[3] 480 U.S. 1, 18 n. 8 (1989).

to prevent "potentially serious encroachments on protected religious freedoms." To meet the confines of the Establishment Clause, "an accommodation must be measured so that it does not override other significant interests."[4] It may not place "unyielding weight" on the religious interest "over all other interests," including the interests of medical providers.[5]

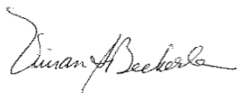
HB 159 fails this test because it grants health care providers an exemption without taking into consideration the harm such an exemption would place on the medical needs and interests of the patient. Indeed, passage of HB 159 would put patient health at risk. The bill's language allows health care providers the right to "refuse to perform or to participate in a health care service that violates their conscience" when related to abortion, human cloning or embryonic stem cell research and sterilization, with an exception only when there is an immediate danger to the life of a patient.

In *Estate of Thornton v. Caldor*,[6] the Supreme Court struck down a law that exempted employees from work "no matter what burden or inconvenience this imposes on the employer or fellow workers."[7] The law provided "no exception," no account of "the imposition of significant burdens," and "no consideration as to whether the employer has made reasonable accommodation proposals."[8] This bill does the same, requiring employees and workers to cover these employees who refuse to serve patients regardless of how such an exemption affects them.

Conclusion

Although Americans United supports some accommodations to protect religious freedoms, the exemption in HB 159 is too broad, and would endanger the health and safety of patients in need of medical services in the state. Accordingly, we urge you to oppose HB 159.

Sincerely,



Vivian Beckerle
President, Alabama Chapter
Americans United for Separation of Church and State

[4] *Cutter v. Wilkinson*, 544 U.S. 709 (2005).
[5] *Estate of Thornton v. Caldor, Inc.*, 472 U.S. 703, 704, (1985).
[6] 472 U.S. at 704.
[7] *Id.* at 708-09.
[8] *Id.*