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The Honorable Joseph Hagan
Chair
Judiciary Committee
New Hampshire House of Representatives
107 North Main Street
Concord, New Hampshire 03301

The Honorable Claire Rouillard
Vice Chair
Judiciary Committee
New Hampshire House of Representatives
107 North Main Street
Concord, New Hampshire 03301

Re: Oppose HB 1787 – Do Not Allow the Use of Religion to Discriminate

Dear Chair Hagan and Vice Chair Rouillard:

On behalf of the New Hampshire chapter, members, and supporters of Americans United for Separation of Church and State, I write to express our opposition to HB 1787. Under the guise of religious liberty, this bill would allow healthcare providers to refuse to participate in reproductive care, thereby creating a threat to patients' care.

Religious liberty is a fundamental American value. It guarantees us all the right to believe or not as we see fit, but it does not give anyone the right to use religion as a justification to deny others' rights. This bill should be rejected because it would result in harm to women and their families and, thus, likely violates constitutional protections for religious freedom.

The Exemption Harms Patients and Limits Access to Care

The exemption created by HB 1787 would put patient health at risk. Under the bill, a wide range of health care workers could refuse to engage in an extremely broad range of activities related to reproductive health care. The result—women would face serious harm. The bill would jeopardize a woman's ability to access comprehensive health care or even information about appropriate treatments in emergency situations. It would foster discrimination against women by putting the religious beliefs of healthcare providers above their health.

For example, an employee could withhold information about emergency contraception from a victim of rape or incest seeking care at a public clinic or hospital. Or women experiencing miscarriages could be refused treatment by providers and left in the dark about their treatment options.

HB 1787 Raises Serious Constitutional Concerns

The U.S. Constitution limits the government's ability to create religious exemptions. The Establishment Clause prohibits creating religious and moral exemptions that would

detrimentally affect any third party.¹ When crafting such an exemption, the government “must take adequate account of the burdens” that it “may impose on nonbeneficiaries” and must ensure that any exemption is “measured so that it does not override other significant interests.”²

HB 1787 fails this test because it places the religious views of healthcare providers (defined so broadly as to include any employee at a hospital, clinic, or medical school, among others) above the medical needs of patients, putting their health at risk. Under HB 1787, healthcare providers and other employees could refuse to provide treatment regardless of the availability of other professionals. Indeed, a patient in need of emergency care could find that they are unable to find a doctor to provide life-saving services.

Exemptions that create a significant, harmful, discriminatory impact on others, like the one created by this bill, are impermissible and must be barred.

Conclusion

New Hampshire should not allow religion to be used to block access to women’s ability to access reproductive healthcare. This threatens the religious freedom that protects us all.

For all of these reasons, Americans United opposes HB 1787 and asks that you vote it inexpedient to legislate. Thank you for your consideration on this important matter.

Sincerely,



Nikolas Nartowicz
State Legislative Counsel

cc: Members of the House Judiciary Committee

¹ *E.g., Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2781 n.37 (2014) (citing *Cutter v. Wilkinson*, 544 U.S. 709, 720 (2005)); *Holt v. Hobbs*, 135 S. Ct. 853, 867 (2015) (Ginsburg, J., concurring); *Cutter*, 544 U.S. at 726 (may not “impose unjustified burdens on other[s]”); *Texas Monthly, Inc. v. Bullock*, 489 U.S. 1, 18 n.8 (1989) (may not “impose substantial burdens on nonbeneficiaries”).

² *Cutter*, 544 U.S. at 720, 722; see also *Estate of Thornton v. Caldor, Inc.* 472 U.S. 703, 709-10 (1985).