



# Americans United for Separation of Church and State

## ALABAMA CHAPTER

---

April 24, 2017

The Honorable Kay Ivey  
Alabama State Capitol  
600 Dexter Avenue  
Montgomery, Alabama 36130

### **Re: HB 95 – Bill Would Use Religion as an Excuse to Discriminate**

Dear Governor Ivey:

On behalf of our members and supporters, the Mobile Chapter of Americans United for Separation of Church and State urges you to veto HB 95, 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. Enactment 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.

#### **This Bill's Exemption Is Unconstitutionally Broad**

The Constitution puts limits on the government's ability to create religious exemptions: "At some point, accommodation may devolve into [something] unlawful."<sup>1</sup> The constitutional safeguards are straightforward: "an accommodation must be measured so that it does not override other significant interests"<sup>2</sup> or "impose unjustified burdens on other[s]."<sup>3</sup> Under this rationale, the Supreme Court struck down a state law that created a blanket exemption permitting employees to take off work for their Sabbath because it "unyielding[ly] weight[ed]" their religious interests "over all other interests."<sup>4</sup>

HB 95 fails this test because it places the religious views of health care providers (defined so broadly as to include *any employee* at a hospital or medical or nursing school) above the medical needs of patients, putting their health at risk. Under HB 95, health care providers and other employees could refuse to provide nearly any service or to do nearly any task, including "[t]esting, diagnosis or prognosis, research, instruction, prescribing, dispensing or administering any device, drug, or medication, surgery, or other care or treatment" related to abortion, human cloning, human embryonic stem cell research, and sterilization.

Some may argue that because health care providers must make their religious objections known in writing, the bill does not burden employers or patients. But that is false. HB 95 only requires an employee to provide notice of their refusal 24 hours prior to a service or procedure. This could leave little time for

---

<sup>1</sup> *Corp. of the Presiding Bishop v. Amos*, 483 U.S. 327, 334-35 (1986) (internal quotation marks omitted).

<sup>2</sup> *Cutter v. Wilkinson*, 544 U.S. 709, 722 (2005). Likewise, it must be calculated to lift an actual burden on religious exercise. *E.g.*, *County of Allegheny v. ACLU*, 492 U.S. 573, 613 n.59 (O'Connor, J., concurring) ("[A]n accommodation of religion, in order to be permitted under the Establishment Clause, must lift 'an identifiable burden on the exercise of religion.'") (quoting *Corp. of Presiding Bishop*, 483 U.S. at 348; *Wallace v. Jaffree*, 472 U.S. 38, 57 n.45 (1985)).

<sup>3</sup> *Cutter*, 544 U.S. at 726. *See also Alabama Monthly, Inc. v. Bullock*, 480 U.S. 1, 18 n.8 (1989) (such accommodations may not impose "substantial burdens on nonbeneficiaries").

<sup>4</sup> *Estate of Thornton v. Caldor, Inc.*, 472 U.S. 703, 710 (1985).

employers or patients to find a provider willing to provide the appropriate care. A patient could be in the situation where all local providers refuse to provide healthcare that meets the medical standard of care. In fact, this legislation contemplates that outcome and instead of protecting the patient, grants the healthcare provider a defense to civil and criminal liability from their actions.

### **This Exemption Causes Real Harm to Patients**

Because of the bill's sweeping definitions, enactment of HB 95 would certainly put patient health at risk. Examples of real harm could 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 refuse to schedule an appointment, arguing that doing so 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.

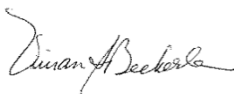
### **This Bill Improperly Uses Religion as a Defense to Liability**

The language of this bill is misleading. Although it purports to prevent discrimination against healthcare service providers, it actually provides special treatment for providers' and employees' religious beliefs at the expense of patients' health. This bill shields health care providers, while failing to prevent discrimination against patients seeking actual medical services. Moreover, it 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.

\* \* \*

Although Americans United supports accommodations to protect religious freedoms, the exemption in HB 95 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 veto HB 95.

Sincerely,



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