January 23, 2018

The Honorable Frank Kotowski
Chair
Committee on Health, Human Services and Elderly Affairs
New Hampshire House of Representatives
107 North Main Street
Concord, New Hampshire 03301

The Honorable Donald LeBrun
Vice Chair
Committee on Health, Human Services and Elderly Affairs
New Hampshire House of Representatives
107 North Main Street
Concord, New Hampshire 03301

Re: Oppose HB 1560 – Public Funding For Critical Healthcare Does Not Violate Rights of Conscience and Religious Liberty

Dear Chair Kotowski and Vice Chair LeBrun:

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 1560. This bill would prohibit state Medicaid funding from being used for transition-related healthcare, which would put patients in jeopardy, as they could be denied lifesaving healthcare. In particular, we write to explain that the bill’s claim that state funding for such care may violate the New Hampshire constitutional provisions “regarding rights of conscience and religious liberty” is simply wrong.

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 their religion as a justification to deny others’ rights. Indeed, treating one group of people differently under the guise of religious liberty—such as denying one group of people healthcare—threatens that very liberty that protects us all.

People of faith have many and varied, deeply held religious and moral beliefs, including on sexual orientation and gender identity. Many faith leaders and congregations believe that equality for trans New Hampshirites is a moral imperative. And faith leaders on the other side are also engaged in the debate. The U.S. Constitution, however, forbids the state from legislating an official preference for one set of religious and moral beliefs over others1 or discriminating against a class of individuals based on vague public unease or even heartfelt moral disapproval.2 For lawmakers, the “obligation is to define the liberty of all, not to

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1 See, e.g., Larson v. Valente, 456 U.S. 228, 244-46 (1982); Epperson v. Arkansas, 393 U.S. 97, 104 (1968).
mandate [their] own moral code.” This bill, in contrast, would deny access to healthcare for an entire group of people simply because providing that healthcare might conflict with the religious views of some.

The U.S. Constitution also prohibits the state from granting religious and moral exemptions that would detrimentally affect others. The state “must take adequate account of the burdens” any religious exemption “may impose on nonbeneficiaries” and must ensure that the accommodation is “measured so that it does not override other significant interests.” HB 1560 takes no account of the significant burdens it will place on people in need of transition-related care.

Gender affirming treatment is a critically important part of healthcare for transgender people. The American Medical Association has explained that an “established body of medical research demonstrates the effectiveness and medical necessity of mental health care, hormone therapy and sex reassignment.” Denying this care to Medicaid recipients would put the health and well-being of transgender patients in jeopardy and could cause catastrophic harm to those critically in need of care.

New Hampshire should not use religion to block transgender people’s access to comprehensive insurance coverage and critical transition-related care or counseling. When religion is used as an excuse to discriminate in medical coverage, everyone’s freedom is compromised. For all of these reasons, Americans United opposes HB 1560. Thank you for your consideration on this important matter.

Sincerely,

Nikolas Nartowicz
State Legislative Counsel

cc: Members of the House Committee on Health, Human Services and Elderly Affairs

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7 American Medical Association House of Delegates, Resolution 122, A-08