



Testimony before the Committee on Human Services on Raised Bill No. 1343: An Act Concerning Compassionate Care for Victims of Sexual Assault

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Thank you Senator Harris, Representative Villano and members of the Committee on Human Services. I am the Legal Director of the American Civil Liberties Union of Connecticut and am here to express our support for Raised Bill No. 1343.

The ACLU of Connecticut Supports Raised Bill No. 1343

The ACLU of Connecticut supports laws that ensure that sexual assault survivors receive comprehensive care in the licensed health care facilities that provide emergency treatment. The ACLU of Connecticut opposes any amendment that would include a “religious exemption” or “refusal clause” exempting religiously-affiliated health care facilities in Connecticut from providing emergency contraception to all rape victims.

We proceed from a long-held position of profound respect for both reproductive rights and religious liberty. It is with the protection of both of these interests as our goal that we present this testimony.

A rape survivor must be offered EC during her initial exam.

Every day, women who have been sexually assaulted seek treatment in emergency care facilities. Among their concerns is the possibility of pregnancy. Emergency contraception (EC or the “morning after pill”) is a safe and reliable method to prevent pregnancy after unprotected intercourse, including a sexual assault. The American College of Obstetricians and Gynecologists and other major medical groups recommend that emergency facilities offer EC to all sexual assault patients who are at risk of pregnancy.

EC is basic health care for women who have been raped. Time is absolutely critical to a rape survivor who wishes to prevent pregnancy. The effectiveness of EC diminishes with delay. Experts stress that EC is most effective the sooner it is taken, with effectiveness decreasing every 12 hours. Therefore, it is vital that emergency care facilities offer EC to rape survivors during their initial exams.

A rape survivor who does not obtain EC in the emergency room must track down EC on her own. The Food and Drug Administration’s recent action to increase availability of EC by making it available without a prescription to women 18 and older who present

government-issued proof of age does not address a sexual assault survivor's immediate needs. Some sexual assault survivors will still need to get a prescription from a physician and all women will have to find a pharmacy that stocks the medication. Most importantly, a sexual assault survivor is already in crisis and should not have to seek out additional medical care to prevent pregnancy. In addition to the emotional burden this imposes, the rape survivor would face increased risk of pregnancy due to the delay inherent in having to track down EC, and in some cases she would be unable to obtain EC at all.

Raised Bill No. 1343 would not violate the constitutional rights of religiously-affiliated facilities that provide emergency health care services.

The inclusion of a refusal clause for religiously-affiliated health care facilities is neither constitutionally required nor good policy.

As currently interpreted by the U.S. Supreme Court, the Free Exercise Clause of the First Amendment to the U.S. Constitution does not relieve an institution from compliance with a “valid and neutral law of general applicability” because it conflicts with the institution’s religious beliefs. *Employment Division v. Smith*, 494 U.S. 872, 879 (1990). A religiously-affiliated health care facility therefore has no federal constitutional right to refuse to abide by a general law requiring it to provide EC to sexual assault survivors upon request.

No religiously-affiliated health care provider has brought a legal challenge to a state law requiring that EC be provided upon the request of rape survivors. However, courts in two states have recently held that the Constitution does not require a religious exemption to reproductive health mandates. *See Catholic Charities of Sacramento, Inc. v. Superior Court*, 85 P.3d 67 (Cal.), *cert. denied*, 543 U.S. 816 (2004) (No. 03-1618); *Catholic Charities of the Diocese v. Serio*, 859 N.E.2d 459 (N.Y. 2006). Both cases – one in New York and the other in California - were challenges by religiously-affiliated employers to state requirements that employers who provide prescription insurance coverage include coverage for prescription contraceptive drugs and devices. Both laws exempted a narrow category of religious employers, such as churches, mosques, and synagogues, but not religiously-affiliated charities and other social service organizations. The exemptions were based on the facts that the purpose of religious employers is the inculcation of their faith, and that they primarily hire and serve people who share the tenets of that faith.

Immediately upon passage, religiously-affiliated social service employers in both states, including Catholic Charities, who did not meet the statutory definition of religious employer, sued the state. They claimed a constitutional right to be exempted from compliance with the contraceptive equity law. In both cases, the highest state courts soundly rejected the challenges and upheld the laws.

Neither court questioned the sincerity of the employers’ religious beliefs. They concluded that the laws do not violate the Constitution because they are facially neutral, generally applicable laws – they apply to all employers who offer health insurance and do not target religious practices or beliefs.

Just as employers with religious objections may be legally required to offer insurance coverage for contraception, health care institutions with a religious objection can be legally required – consistent with the Constitution – to ensure that sexual assault survivors receive comprehensive treatment, including the offering of emergency contraception.

Exempting religious-affiliated health care institutions with a religious objection from compliance with Raised Bill No. 1343 is not good policy. The Bill is facially neutral - it applies to all health care facilities that provide emergency treatment to rape victims. The purpose of the Bill is to ensure that all rape victims are provided the compassionate care and psychological relief they deserve and guarantee that they are not denied health care options based on where they live or the hospital to which they are taken following the attack.

Religiously-affiliated health care facilities are not religious organizations

Both the New York and California courts also rejected the employers' claim that the laws intrude into the autonomy of the religiously-affiliated organizations in violation of the Constitution. They ruled that, although the state may not dictate the tenets of faith or control the relationship of a church to its ministers, the state may enact labor laws to protect the employees of the religiously-affiliated organizations, even if those laws conflict with church doctrine. They concluded that the laws implicate relationships between non-profit religiously-affiliated corporations and their employees, some of which do not belong to the particular faith. As the California Supreme Court stated, “[o]nly those who join a church impliedly consent to its religious governance on matters of faith and discipline.” *Catholic Charities of Sacramento, Inc. v. Superior Court*, 85 P.3d 77.

Just as Catholic Charities is not a religious organization, religiously-affiliated health care facilities are not religious organizations and should not be exempt from a law requiring immediate provision of EC to rape victims. The purpose of religiously-affiliated health care facilities is to provide health care – not the inculcation of religious values – to the general public. They not only employ many people who do not share their religious beliefs but primarily serve people who do not share those beliefs.

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