



THE ETHICS & RELIGIOUS
LIBERTY COMMISSION
OF THE SOUTHERN BAPTIST CONVENTION

March 6, 2023

BY ELECTRONIC SUBMISSION

U.S. Department of Health and Human Services
Office of Civil Rights, Office of the Secretary, HHS
Attention: Conscience NPRM, RIN 0945-AA18
Hubert H. Humphrey Building, Room 509F
200 Independence Avenue SW
Washington, DC 20201.

Re: Request for Public Comment Concerning Proposed Rule on Safeguarding the Rights of Conscience as Protected by Federal Statutes; RIN 0945-AA18

Dear Sir or Madam:

The Ethics & Religious Liberty Commission (ERLC) of the Southern Baptist Convention (SBC) respectfully submits the following comments regarding our concerns with the proposed rule “Safeguarding the Rights of Conscience as Protected by Federal Statutes.”

The ERLC is the public policy and ethics entity of the SBC, which has nearly 14 million members in over 50,000 churches and congregations in the United States. We are charged by the SBC with addressing public policy affecting such issues as religious liberty, marriage and family, the sanctity of human life, and human dignity. Religious freedom and the protection of consciences are indispensable, bedrock values for Southern Baptists. The Constitution’s guarantee of freedom from governmental interference in matters of faith is a crucial protection upon which SBC members and adherents of other faith traditions depend as they follow the dictates of their conscience in the practice of their faith.

The stated intention of this proposed rule is to rescind much of the 2019 Final Rule regarding conscience rights for healthcare workers. The Department proposes to rescind portions of the 2019 Final Rule claiming those portions are (1) redundant, unlawful, confusing, (2) undermine the balance Congress struck between safeguarding conscience rights and protecting access to health care, and (3) because significant questions have been raised as to their legal authorization.

The ERLC is deeply concerned about the NPRM as currently drafted, as it will lead to fewer pathways for and lessened enforcement of protections of one of Americans’ most fundamental rights — to always act consistent with and never act against one’s conscience, especially as it pertains to deeply held religious or moral commitments.



We are specifically concerned with the rescission of the explanation of the applicability of and prohibitions of requirements under conscience protection laws, as this weakens understanding and ultimately enforceability of conscience rights. Additionally, we are concerned with the elimination of the definition of critical terms including “assist in the performance,” “discriminate or discrimination,” “health care entity,” and “health service program,” as these terms are critical for both entities understanding the applicability of the law and for individuals in proving violation of rights. Furthermore, canceling requirements relating to compliance, including the requirement to maintain records, cooperate with OCR enforcement, and refrain from intimidation or retaliatory acts, is contradictory to the stated goal of protecting conscience rights. And finally, removing language related to the rule of construction “in favor of a broad protection of the free exercise of religious beliefs and moral convictions,” is incongruent with a Department that understands the fundamental nature of these rights, and thus intends to uphold and protect them.

As we have written to the Department before, a failure to enforce the law undermines the very rights enshrined in those laws.

Despite the countless Federal statutes that protect the conscience rights of Americans, these statutes are rendered meaningless unless they are adequately promoted and enforced by the Department. Amongst the laws that require such enforcement are the Church Amendment that ensures conscience protections for individuals and entities related to abortion, sterilization, and certain other health services; the Coats-Snowe Amendment that ensures conscience protections for health care entities related to abortion provision or training, referral for such abortion or training, or accreditation standards related to abortion; and the Weldon Amendment that ensures conscience protections for healthcare providers related to abortion and assisted suicide, euthanasia, or mercy killing. Each of these laws, in addition to countless others, prohibits the coercion of those with religious and moral objections from participating in highly controversial “medical” procedures.

For Southern Baptists, conscience protections are fundamental to our ability to freely exercise our religion and live out the most basic tenets of our faith.

The Bible instructs us that faith in Christ Jesus should suffuse all that we do (Romans 6:6–22; 12:1–2; 1 Cor. 4:1–2). Because God is the origin and Creator of all things (Psalm 24:1), Christians believe that God is concerned with all areas of life. Thus, Christians seek to follow Jesus in every area of life and see their entire lives, including their vocational work, as service to him, not merely their religious activities. (Col. 3:17; 23–24; 1 Cor. 10:31). These fundamental principles are reflected in the Southern Baptist Convention’s summary of beliefs, the *Baptist Faith & Message*. As described in the *Baptist Faith & Message*, “Christians have a spiritual debtorship to the whole world, a holy trusteeship in the gospel, and a binding stewardship in their possessions. They are therefore under obligation to serve Him with their time, talents, and material possessions. . . . Christians should contribute their means cheerfully, regularly, systematically, proportionately, and liberally for the advancement of the Redeemer’s cause on earth.” Robust conscience protections allow them to do so, while materially serving their neighbor and contributing to society, without the fear of being coerced to violate their consciences.



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Knowledge of God’s saving grace compels Christians to obey God’s commands throughout their lives (James 2:17). The *Baptist Faith & Message* states that Christians should actively “seek to bring industry, government, and society as a whole under the sway of the principles of righteousness, truth, and brotherly love.” Moreover, the Bible teaches that Christians should discern when to refrain from activities that would be unhelpful, or harmful, to their neighbor (1 Cor. 6:12; 10:23–11:1). Broad conscience protections allow Christians to remain faithful to these core beliefs while also continuing their important work, serving their communities through providing medical care.

The proposed revisions to the 2019 Final Rule in conjunction with recent unprecedented actions taken by the Biden administration and HHS Secretary Xavier Becerra, to ignore and deny conscience rights of religious health care workers, are gravely concerning to Southern Baptists. We urge the Department to maintain the robust conscience protections found in the 2019 Final Rule in order to uphold current federal law and the fundamental rights to freely exercise religion deeply enshrined in the Constitution of the United States.

Thank you for the opportunity to comment.

Respectfully submitted,

Frederick Brent Leatherwood
President
Ethics & Religious Liberty Commission
of the Southern Baptist Convention