

**Congress of the United States**  
**Washington, DC 20515**

February 11, 2011

The Honorable Kathleen Sebelius  
Secretary  
U.S. Department of Health & Human Services  
200 Independence Avenue, S.W.  
Washington, D.C. 20201

Dear Secretary Sebelius:

It has come to our attention that the Department of Health and Human Services (HHS) intends to take final action on the proposed rescission of the conscience regulations that were issued in December 2008 (hereafter "Implementing Regulations") to implement and enforce existing federal statutes that protect the conscience rights of health care professionals. At the same time, we have been made aware of several health care providers who have filed complaints under those regulations with your department. These providers allege blatant violations of the regulations and the underlying federal laws.

Catherina DeCarlo, a nurse in New York, alleges that she was forced by Mt. Sinai Hospital to participate in the abortion of an unborn child, despite her moral and religious objections to assisting in the termination of human life. Similarly, two nursing students filed complaints with HHS Office of Civil Rights (OCR) because Vanderbilt University Medical Center's nurse residency program application specifically required all applicants to labor and delivery, obstetrical and gynecological care, newborn nursery, and postpartum care programs to acknowledge in writing that they may be required to assist in abortions. We are aware that Vanderbilt subsequently changed its application requirement, but only after these complaints were filed.

Both of these situations are precisely the type of discrimination against health care providers that federal conscience statutes were meant to redress. The Church Amendment of 1973 (42 U.S.C. § 300a-7) specifically prohibits entities receiving certain federal health funding from "discriminat[ing] against any applicant for training or study," and also from "discriminat[ing] in the employment, promotion, or termination of employment of any physician or other health care personnel," because of their objection to being involved in abortion procedures contrary to their religious or moral beliefs.

On June 7, 2010, Michael Carter, manager of the HHS OCR in Region II, informed counsel for Mrs. DeCarlo that OCR "had been designated to receive complaints of discrimination and coercion that violate the Church Amendment . . . and its implementing regulation," namely the December 2008 Implementing Regulations. However, in documents recently filed in *State of Connecticut v. United States*, the Justice Department informed the court that "HHS expects to have a final rule" reviewing the Implementing Regulations, published "as early as January 31, 2011, and no later than March 1, 2011." We strongly oppose any action that would undermine or eliminate the responsibility of HHS to enforce conscience laws that have been enacted by Congress for nearly four decades. The Implementing Regulations did not add to the substance of existing law, but required fund recipients to certify compliance with the law and more specifically committed HHS to enforce those laws as written.

For this reason, the Administration's signal that it intends to finalize rescission of the Implementing Regulations raises serious concerns that HHS may not fully enforce federal conscience laws by allowing grant recipients to violate conscience statutes in some cases. We believe this concern is well founded since your own proposed rescission cites circumstances in which grantees could argue that those conscience laws constitute a "deni[al of] access to services" such as abortion.

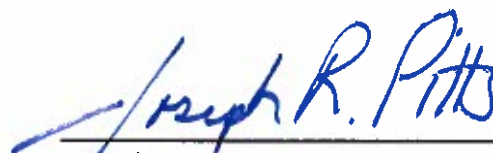
We pose, therefore, the following questions:

1. Does HHS intend to modify or rescind the December 2008 regulations implementing longstanding conscience laws? If so, can you assure us that such action will not result in the interruption or abrogation of your department's review of complaints of violations of federal conscience statutes on which the Implementing Regulations were predicated? Can you also demonstrate concrete evidence that such action will not undermine the ability of persons and institutions to file complaints with HHS OCR for violations of federal conscience statutes and have those complaints reviewed, investigated and enforced (including penalties for failure to comply). Please provide us with copies of any other complaints filed and documentation demonstrating what actions HHS has taken in responding to each complaint. (Personal identification such as an individual's name may be redacted if necessary to protect privacy.)
2. The Implementing Regulations require that by fiscal year 2010 HHS would require recipients of funds covered by federal conscience rights statutes to certify compliance with the laws applicable to them. Has your department followed that certification requirement? Please provide a copy of any and all memos, guidance or other information provided to the relevant funding recipients regarding certification. Has Mt. Sinai Hospital been required to certify such compliance? Has Vanderbilt University Medical Center been required to meet this certification requirement? Please provide copies of such certifications provided by these fund recipients for the fiscal years 2010 through the present.
3. What is the status of the investigation of the complaint filed by Mrs. DeCarlo, and what steps has your department taken with respect to the issues raised in that complaint? Specifically, please provide us with copies of all communiqués between the regional and national OCR regarding the DeCarlo complaint. Please also include a list of all federal funding provided to Mt. Sinai from fiscal year 2008 to the present including funds provided directly or through a subagreement, subgrant or subcontract. Please indicate which of those funds are covered by conscience requirements under the Church Amendments and provide all documentation associated with funds covered by the Church Amendments.

Given the seriousness of the violations that the complainants allege against Vanderbilt University and Mt. Sinai Hospital, and the potential for your Department's action regarding the Implementing Regulations as early as January 31 and no later than March 1, 2011, we respectfully request that you provide a detailed response to this letter no later than February 21, 2011. Thank you for your cooperation in this matter of great significance to every American who wants to choose health care providers who are free to exercise their conscience rights in accord with the protections provided under federal law.

Sincerely,

  
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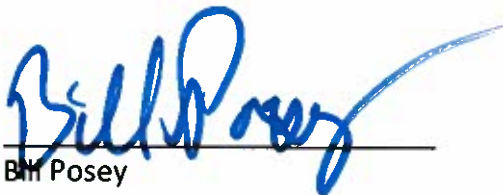
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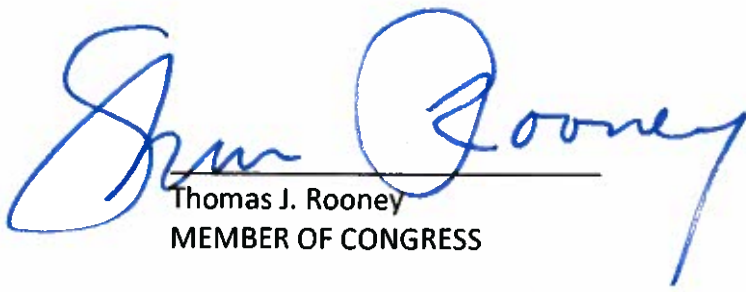
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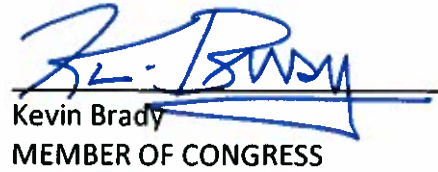


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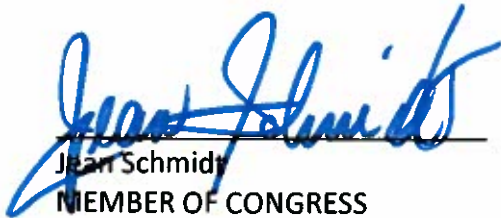
  
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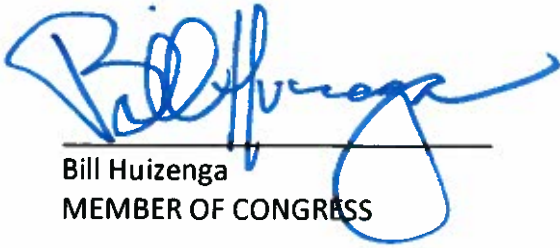
  
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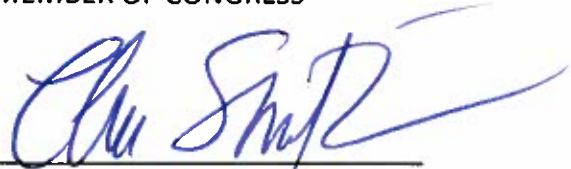
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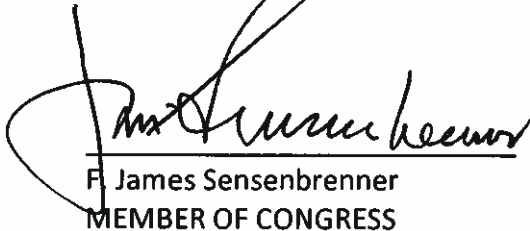
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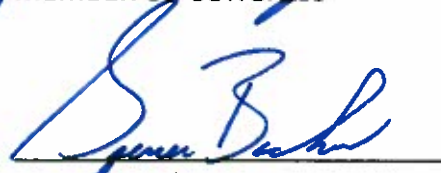
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