



Eastern Region Office
PO Box 40008
Philadelphia, PA 19106
215-592-1513 T
215-592-1343 F

Central Region Office
PO Box 11761
Harrisburg, PA 17108
717-238-2258 T
717-236-6895 F

Western Region Office
313 Atwood St.
Pittsburgh, PA 15213
412-681-7736 T
412-681-8707 F

**TESTIMONY OF
ANDY HOOVER, LEGISLATIVE DIRECTOR
AMERICAN CIVIL LIBERTIES UNION OF PENNSYLVANIA
SUBMITTED TO
SENATE PUBLIC HEALTH AND WELFARE COMMITTEE
HEARING ON SENATE BILL 1255
HEALTHCARE PROVIDER CONSCIENTIOUS OBJECTION
OCTOBER 14, 2008
STATE CAPITOL, HARRISBURG**

Good morning, Chairman Erickson and members of the committee. Thank you for the opportunity to testify today on Senate Bill 1255. My name is Andy Hoover, and I am the legislative director of the American Civil Liberties Union of Pennsylvania. Founded in 1920, the ACLU is one of the nation's oldest civil rights organizations and today has a nationwide membership of approximately 600,000 people. I am here today on behalf of the 18,000 members of the ACLU of Pennsylvania.

Senate Bill 1255 would allow any employee of a healthcare provider and any institution that provides healthcare to choose not to participate in procedures that the employee or the institution finds to be morally objectionable. The definition of "health care service" in SB 1255 includes tasks as simple as patient referral and counseling. And the type of care defined in the bill even includes birth control.

The ACLU opposes SB 1255, and we believe that we have a unique perspective on this issue. The ACLU has long been a defender of religious liberty. Our work in defending the free exercise rights of people of faith is robust. We defended a church in

western Pennsylvania that faced the closure of its soup kitchen.¹ We've represented street preachers who faced the threat of arrest for simply speaking in the public square.² We stood up for Christians who wanted to protest gay rights,³ even though we also believe in LGBT equality. We defended a librarian who was suspended after she refused to participate in a Harry Potter event due to her religious beliefs.⁴

The ACLU's record on defending religious liberty is clear and indisputable.

The ACLU has also defended the right to privacy and reproductive freedom. Women should control decisions about their bodies and their health. The government should not make those decisions for them. We filed a friend-of-the-court brief in the landmark Supreme Court case *Griswold v. Connecticut*, which overturned state bans on birth control. In the 1970s, we handled cases supporting the right of abortion clinics to advertise, supporting the right of women to have access to medically safe abortion techniques, and opposing laws that gave husbands and parents absolute veto power over abortions. Our defense of women's rights and reproductive freedom continues to this day.⁵

The ACLU's defense of both religious liberty and a woman's right to control her own body places us right in the crossroads of these two issues.

¹ Dailey, R.A. Battle to feed hungry at church goes on. *Pittsburgh Post Gazette*, January 11, 2007.

² ABC News. ACLU boasts surprising allies. Retrieved October 9, 2008, from <http://abcnews.go.com/WNT/story?id=548951&page=1>.

³ Letter from ACLU of Florida to St. Petersburg city officials available at <http://www.aclufl.org/pdfs/StPeteLetter.pdf>.

⁴ Taylor, B. 'Potter' event led to rights violation, ACLU says. *Associated Press*, May 28, 2008. Retrieved October 9, 2008, from

<http://www.stltoday.com/stltoday/news/stories.nsf/missouristateneews/story/11BBE7E0C3FB6B70862574570010F95A?OpenDocument>.

⁵ ACLU. The ACLU and women's rights: Proud history, continuing struggle. Retrieved October 9, 2008, from <http://www.aclu.org/womensrights/gen/13150res20020312.html>.

SB 1255 is both unnecessary and potentially harmful to the health of patients. It is unnecessary to protect an individual's right to not participate in procedures he or she finds objectionable because that right is already protected under the Civil Rights Act. Title VII of that act requires an employer to attempt to accommodate current and prospective employees' refusals to provide *any* health care service on the basis of their religious beliefs so long as the accommodation does not pose an undue hardship on the employer's overall ability to provide health care services to its patients. Title VII thus contemplates a careful balancing of interests. It gives employers leeway to take into account the effect of an employee's refusal on public health and safety, and at the same time, Title VII seeks the maximum possible accommodation of an individual's religious objection.

The Civil Rights Act finds the middle ground between an employee's moral and religious objections and the needs of the patient to have access to the best healthcare possible. Unfortunately, SB 1255 makes no mention of the patient's needs. It implies that the patient's health is a low priority and that the patient's own moral grounding on what is and is not acceptable is unimportant.

In addition, the bill includes no provision requiring the healthcare provider to find the means for the patient to have access to the procedure in question, even in emergency situations. If the employee refuses to give the patient the necessary treatment, the patient is stuck. She must find another provider who will give her the best treatment possible. In emergency situations, this is impossible. There have been cases in which emergency room nurses refused to participate in abortions, to the detriment of the patient. Current

law permits hospitals to take the patient's needs into account. We must have such protections, but those protections are lacking in SB 1255.

SB 1255 gives a blank check to providers to refuse to give any information to a patient. It potentially leaves the patient in the dark about her healthcare options.

SB 1255 is also bad policy because it extends the right of moral objection to institutions. SB 1255 allows institutions to refuse to conduct a long list of procedures and even information about those procedures, including birth control.

Access to safe and effective contraception is a critical component of basic health care for women. Since 1965, when the U.S. Supreme Court first protected a woman's access to contraception, maternal and infant mortality rates have declined. In fact, the Centers for Disease Control and Prevention has declared family planning one of the ten most significant public health achievements of the 20th century. The reasons are simple: Without contraception, women have more unplanned pregnancies and are less likely to obtain adequate and timely prenatal care. Access to contraception is also essential to women's equality and autonomy, allowing women to make educational, employment and life choices that will benefit themselves and their families.

However, SB 1255 could undermine these important goals. A notice that the hospital may refuse to provide some care isn't sufficient. Does that mean a rape survivor has to go from place to place? Does that mean that after the trauma of the assault she is supposed to look for the institution's notice and assess what it means? More importantly, again, the measure has no protections for the patient – for information, for referrals, for

diagnosis, or for emergency. And it lets an institution that has opened its doors to the public to provide a public service impose its religion.

The Bush administration recently tackled this issue. The Department of Health and Human Services (HHS) has proposed regulations similar to the provisions of SB 1255. The comment period on the regulations ended on September 25. The department received more than 200,000 comments on the regulations. Opposition to the regulations was broad and overwhelming and included governors, attorneys general, medical groups, and equal employment opportunity commissioners. Those in opposition included Republicans like Connecticut Governor M. Jodi Rell and Utah Attorney General Mark Shurtleff.

SB 1255 could also prevent Pennsylvania from enforcing its regulations that require emergency facilities to provide emergency contraception (EC) to rape survivors or at least ensure that rape survivors can get EC. The regulations, approved by the Attorney General on January 9, 2008, and put into effect on February 5, 2008, were written because research by

the Clara Bell Duvall Reproductive Freedom Project indicate that approximately 48% of hospitals in this Commonwealth provide emergency contraception to female sexual assault victims on a regular basis. Almost 35% of the hospitals surveyed had some emergency contraception policy, but varied and was unclear. This final-form rulemaking seeks to ensure increased access to appropriate medical and psychological treatment for sexual assault victims by standardizing the policies and procedures which hospitals develop for treatment of sexual assault victims. Proper implementation of this final-form rulemaking will significantly increase the number of hospitals that provide emergency contraception on a regular basis, and eliminate any uncertainty as to established procedures which may currently exist.⁶

⁶ *PA Bulletin*, Doc. No. 08-170, page 2

The failure of hospitals and other facilities treating rape victims to provide EC unacceptably leaves these women at risk of becoming pregnant as a result of assault. SB 1255 could even permit hospitals to fail to counsel or provide a woman with any information at all about the existence of EC. Assuming she knows about her options, a woman who has been raped should not be forced to seek additional medical care to prevent pregnancy. In addition to the emotional burden imposed by such a delay, the risk that a victim will become pregnant increases the longer she is forced to wait to take EC. Unfortunately, in some instances, a rape victim that is refused EC by her hospital or health care facility may be unable to obtain EC at all.

The affronts to public health that could occur if SB 1255 becomes law are stark. A gay adolescent could leave his doctor's office with no information about the importance of using condoms to protect himself against HIV, even if he asked about them. A nurse at a clinic could refuse to provide contraceptives to a white woman whose husband is African American because of the nurse's opposition to interracial marriage. A provider who opposed sterilization would not have to inform her seriously ill patient about that option.

The ACLU strongly advocates solutions that balance the protection of public health, patient autonomy, and gender equality with the protection of individual religious belief and institutional religious worship. To achieve this balance, we believe it is often possible to accommodate an *individual* health care professional's religiously-based refusal to provide a particular health service so long as the professional takes steps to ensure that the patient can receive that service elsewhere. However, because institutions -- such as

hospitals, insurance companies, and pharmacies -- serve patients and customers of all faiths and backgrounds, an institution's wholesale refusal to provide services poses a much greater risk of harm to those who do not share in those religious beliefs and should not be allowed to trump all other important societal interests.

SB 1255 does not appear to strike the appropriate balance between patient access and religious liberty and could therefore seriously undermine women's ability to obtain essential reproductive health services. With that in mind, we ask you to oppose SB 1255.

Chairman Erickson, thank you for the opportunity to testify today. I am willing to take questions at this time.