RELIGIOUS REFUSALS
AND REPRODUCTIVE RIGHTS

Executive Summary

Reproductive Freedom Project
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A critically ill pregnant woman refuses a blood transfusion because her religion teaches that it would rob her of any hope of eternal life, but the hospital seeks a court order to require her to undergo the transfusion to save both her and her fetus. A religiously affiliated community health center serving an inner-city neighborhood refuses to distribute or advise patients to use condoms to prevent the spread of AIDS. A church seeks an exemption from a bill that would require it, and all other employers, to include coverage for prescription contraception in their otherwise comprehensive health insurance plans for employees. An obstetrician, fearing that her patient will choose to have an abortion, refuses to inform her that prenatal tests have revealed a severe anomaly in the fetus she is carrying. A woman who wants to prevent pregnancy following unprotected sex with her husband goes to her local pharmacy to obtain emergency contraception, but the pharmacist refuses to fill her prescription because he believes that the drug may destroy a fertilized egg.

It is a mistake to view these situations as a straightforward contest between religion and reproductive rights. Patients of all faiths and no faith need reproductive health care. Health professionals of all faiths and no faith must make decisions about how to balance their personal convictions with their professional obligations to their patients. Institutional religions stand on both sides of the debate about reproductive choice.

Proceeding from a long-held position of profound respect for both reproductive rights and religious liberty, the ACLU Reproductive Freedom Project has carefully weighed the competing interests involved when religious belief affects decision making about reproductive health care. In our report, Religious Refusals and Reproductive Rights, we offer many perspectives on this issue. After reviewing the main factors that contribute to the current debate on religiously motivated refusals to provide or cover certain reproductive health services, we outline a framework for evaluating when such refusals are appropriate and when they are not. We then describe several real situations in which religious refusals interfere with patients’ health, well-being, and autonomy, and we discuss the results of our new and comprehensive research on the public’s views of this debate.

We also offer a kit to help advocates working in the legislative arena to assess and address bills that protect religious refusals. Finally, we survey how courts have resolved disputes in which religious refusals threaten access to health care.

The Factors That Fuel the Debate

Laws permitting health care institutions and professionals to refuse to participate in abortion, sterilization, or contraception swept the nation in the 1970s. By the end of that decade, the federal government and more than forty states had passed such laws.

After a period in which the issue was mostly dormant, a second wave of refusal clauses broke in the 1990s. These clauses allow entities and/or individuals to
refuse to provide or cover certain health services based on religious or moral objections. They operate to relieve an entity or individual from what would otherwise be a duty to counsel, refer, treat, or insure a patient. The main causes of their resurgence include:

- fast growth in the religiously affiliated health care system;
- the explosion of managed care;
- the development of new reproductive technologies; and
- the increased intensity of advocacy efforts on both sides of the debate.

A Framework for Analysis

Our proposed framework balances protection for the public health in general, reproductive health in particular, patient autonomy, and gender equality with protection for individual religious belief and institutional religious worship. Although informed by our study of the relevant case law, the factors we identify for assessing religious refusals are not part of any currently established legal test. The United States Constitution does not dictate the precise contours or even the existence of refusal clauses. Politics and policy will therefore usually drive legislative decisions about whether to create and how to craft exemptions from legal duties to provide reproductive health care or coverage.

The framework centers on two critical questions:

- \textit{Does a refusal place burdens on people who do not share the beliefs that motivate the refusal?}  
  The more the burdens fall on such people, the less acceptable any claimed right to refuse.

- \textit{Is the objector a sectarian institution engaged in religious practices, or is it instead an entity – whether religiously affiliated or not – operating in a public, secular setting?}  
  The more public and secular the setting, the less acceptable an institution’s claimed right to refuse.

Consideration of these factors can help to distinguish acceptable religious refusals from unacceptable ones.

In the reproductive health context, it is often possible to accommodate individual – as opposed to institutional – refusals to provide certain health services without imposing inappropriate burdens on others.
• A doctor or nurse who cannot in good conscience participate in abortions or contraceptive services should generally be allowed to opt out.

There should be limits, however, even to an individual health professional’s right to refuse. For example, whatever their religious or moral scruples, health professionals should give complete and accurate information and make appropriate referrals, to protect the patient’s right to make and effectuate informed health care decisions. Moreover, religious or moral convictions can never justify denying a patient urgent care.

• A nurse on duty on the labor and delivery floor of a hospital should not be allowed to refuse to participate in an emergency abortion for a patient who is hemorrhaging, when no other nurse is immediately available to assist.

The risk of imposition on others is significantly greater when an employer, hospital, health plan, pharmacy, or other corporate entity seeks an exemption. The refusal of such institutions to abide by reproductive health mandates directly affects employees, patients, and customers of diverse backgrounds and faiths. The law should not permit an institution’s religious strictures to interfere with the public’s access to reproductive health care.

• When a rape survivor is taken to a hospital, no matter what its religious affiliation, she should be offered emergency contraception on site so that she can protect herself from becoming pregnant, an opportunity she will lose if she does not receive the drug within approximately seventy-two hours after the assault.

• An administrative assistant working at a large, diverse Catholic university should not have to pay out-of-pocket for birth control pills because her employer believes contraception is a sin.

While entities operating in the public world ought to play by public rules, churches, temples, mosques, and other institutions whose purpose is to practice and teach religion ought generally to be free of the requirements of laws repugnant to their beliefs.

• A church should not have to include coverage for contraception in a health benefit plan for ministers and other clerics.

• Christian Science sanatoria – which are staffed by Christian Science healers and attend only to those seeking to be healed exclusively through prayer – should be exempt from general health care requirements that conflict with Christian Science teachings.

Application of our framework should lead to these kinds of fair results.
The Women Who Are Harmed

Real women and men have had difficulty receiving the medical care they need when doctors, hospitals, pharmacists, insurers, and employers refuse treatment or health insurance coverage based on religious or moral objections. In the report, we identify many circumstances in which religious refusals block access to health care, and we describe in detail the stories of four women who needed emergency pregnancy terminations and faced unconscionable risks as a result of such refusals.

Where the Public Stands

Religious Refusals and Reproductive Rights makes available for the first time our public opinion research on religious objections to providing reproductive health services. In preparation for this report, we conducted – with the help of the public interest polling firm Belden Russonello & Stewart – six focus groups and a nationwide telephone survey. This qualitative and quantitative research shows that Americans overwhelmingly oppose laws that protect religious objectors at the expense of the patient’s rights and the public health.

The public opposes refusal clauses that threaten access to health care.

- 89% oppose “allowing insurance companies to refuse to pay for medical services they object to on religious grounds.”
- 88% oppose “allowing pharmacies to refuse to fill prescriptions they object to on religious grounds.”
- 86% oppose “allowing employers to refuse to provide their employees with health insurance coverage for medical services the employer objects to on religious grounds.”
- 76% oppose “allowing [hospitals] to refuse to provide medical services they object to on religious grounds.”

The public’s insistence on access reflects its view that religious refusals jeopardize women’s health and lives. Seven in ten Americans are concerned, for example, that if “religiously affiliated hospitals are allowed to limit access to medical services, the health and lives of many women will be threatened.”

The public believes that individuals must be allowed to make health care decisions for themselves. While proponents of refusal clauses often cast the issue as one in which religious liberty is pitted against reproductive rights, the public sees this dichotomy as false.

- 72% agree with the following statement: “Religious liberty is not threatened by requiring hospitals to provide basic medical care. We
are not talking about limiting a person’s ability to worship, but access to basic health care.”

Even when the issue is presented as a choice between the religious interests of institutions and the health care decisions of individuals, however, the public backs the patient.

- 79% believe that it is “more important to respect the personal conscience of individuals making difficult health care decisions” than to “respect the conscience of a religious hospital.”

- 69% believe that it is “more important to protect the reproductive freedom of women” than to “protect the religious freedom of religious hospitals.”

Moreover, the public believes that the government’s first responsibility is to protect the public health.

- 72% are more concerned that the government hold “all hospitals – whether religiously affiliated or not – to the same standards” than they are about keeping “the government from forcing religious hospitals to violate their beliefs.”

- 83% believe that “if a hospital receives government funds, it should be required to provide basic, legal medical services, regardless of the hospital’s religious objections.”

The public is more willing to accommodate religious beliefs if this can be done without impeding access to health care. In an earlier poll similar to ours, Catholics for a Free Choice found that 83% of women are willing to support policies that permit an individual pharmacist to refuse to dispense birth control pills if the pharmacy has an obligation to assign another employee to provide the pills. Without this protection, 83% oppose allowing individual pharmacists to let their personal religious beliefs stand in the way of fulfilling their professional obligations.

Overall, our public opinion research shows that Americans are deeply troubled by the idea that religious interests could come between them and their health care needs.

Other Resources

Additional sections of Religious Refusals and Reproductive Rights, created with particular audiences in mind, are also available from the ACLU Reproductive Freedom Project. The first is an advocacy kit that includes three components: (1) in “Applying the Framework: Distinguishing Between Acceptable and Unacceptable Refusal Clauses,” we demonstrate how our framework applies to actual refusal laws;
(2) in “Applying the Framework: A Worksheet for Analyzing Refusal Clauses,” we guide policy makers and advocates through an assessment of how any given refusal clause fares under our framework; and (3) in “Lessons from the Field: Legislative Strategy on Refusal Clauses,” we offer strategic advice for advocates addressing refusal clauses in the legislative arena. Finally, in “Conflicts Between Religious Refusals and Women’s Health: How the Courts Respond,” we examine how the courts have resolved particular controversies in which health providers’ refusals to treat interfered with patients’ access to health care.
Order Form

To order copies of Religious Refusals and Reproductive Rights please fill out the form below and send to: ACLU Reproductive Freedom Project, 125 Broad Street, 18th Floor, New York, NY 10004. Be sure to check the appropriate boxes and note the number of copies you are requesting in the space provided. For bulk orders of 25 or more, please call: (212) 549-2633.

The report is available as a complete set or in sections as indicated below.

❑ Please send me ______ copies of Religious Refusals and Reproductive Rights:
   ______ Executive Summary

❑ Please send me ______ copies of the Core Report, which includes:
   ______ Refusal Clauses: The Factors That Fuel the Debate
   ______ Refusal Clauses: A Framework for Analysis
   ______ Health Care Denied: The Women Who Are Harmed by Religious Refusals
   ______ Refusal Clauses: Where the Public Stands

❑ Please send me the following selections from the Advocacy Kit:
   ______ Applying the Framework: Distinguishing Between Acceptable and
   ______ Unacceptable Refusal Clauses
   ______ Applying the Framework: A Worksheet for Analyzing Refusal Clauses
   ______ Lessons from the Field: Legislative Strategy on Refusal Clauses

❑ Please send me the Litigation Roundup:
   ______ Conflicts Between Religious Refusals and Women’s Health: How the
   ______ Courts Respond

❑ Please send me ______ copies of the Complete Report (all of the above).

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