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LOZIER

INSTITUTE

On Point
Issue 16 | July 2017

**Oregon Lawmakers
Promote Abortion,
Crush Civil Liberty,
and Hate on Social Justice**

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Oregon Lawmakers Promote Abortion, Crush Civil Liberty, and Hate on Social Justice

Oregon lawmakers [have passed a bill](#) that would force health benefit plans offered in the state to provide coverage for abortion and voluntary sterilization.

The bill, known as HB 3391, also would require health benefit plans to cover any contraceptive drug, device, or product approved by the U.S. Food and Drug Administration. As [this Lozier paper](#) explains, some contraceptives can also cause abortions.

HB 3391 also would require health benefit plans to cover patient education and counseling on contraception and sterilization and services related to sterilization or the administration and monitoring of contraceptive drugs, devices, and products.

Under HB 3391, health benefit plans would not be permitted to impose on an enrollee a deductible, coinsurance, copayment or any other cost-sharing requirement for the mandated coverage. Further, the bill would provide public funds to reimburse for some individuals the cost of abortion and other coverage mandated by the bill.

HB 3391 passed the House July 1 and the Senate July 5. According to the [Washington Post](#), “The bill was expected to be signed into law by Gov. Kate Brown.”

The *Washington Post* reports that the Governor’s office “exclaimed ‘Yes! Yes! Yes!’ . . . on Twitter, referring to the bill’s passage.”

The better response to HB 3391 would be “No! No! No!”

HB 3391 Promotes Abortion

HB 3391 promotes abortion in at least two ways. First, HB 3391 forces health benefit plans to include abortion coverage. Second, HB 3391 provides public funds to pay for abortions in some cases.

The individual right to life is a cornerstone human right. Protecting all human life from conception to natural death is a serious matter of social justice and remains a proper function of the state even under a very limited vision for government. By promoting abortion HB 3391 denies human rights, violates social justice, and perverts the proper role of government.

HB 3391 Crushes Civil Liberties

Religious freedom and freedom of conscience are vital civil liberties. HB 3391 crushes civil liberty by forcing many religiously or conscientiously opposed individuals and institutions to facilitate the provision of abortion, sterilization, and contraception (including contraceptives that can cause abortion).

HB 3391 includes at least two exemptions, but they fail to protect civil liberty adequately.

The first exemption comes from the “grandfather clause” provided by Section 2(7)(e). It states that the bill does not require a health benefit plan to cover abortion “if the insurer offering the health benefit plan excluded coverage for abortion in all of its individual, small employer and large employer group plans during the 2017 plan year.” Any plan failing this rigorous, retroactive test is out of luck, unless covered by the extremely narrow religious employer exemption described below. Furthermore, the grandfather provision applies only to abortion, not to sterilization, contraceptives (at least not non-abortifacient contraceptives), and related services (at least those not involving abortion). Therefore, even plans satisfying the grandfather test will be required to offer these coverages.

Section 2(9) provides the second exemption, this one for religious employers. It states, “An insurer may offer to a religious employer a health benefit plan that does not include coverage for contraceptives or abortion procedures that are contrary to the religious employer’s religious tenet.” The insurer may provide such a plan “only if the insurer notifies in writing all employees who may be enrolled in the health benefit plan of the contraceptives and procedures the employer refuses to cover for religious reasons.”

The religious employer exemption suffers from several flaws.

For one thing, it does not apply to sterilization. Further, at least insofar as they do not involve abortion, the religious employer exemption does not apply to patient education and counseling on contraception and sterilization, and services related to sterilization or the administration and monitoring of contraceptive drugs, devices, and products.

Much more significantly, HB 3391 defines “religious employer” very narrowly. Under the bill the term “religious employer” has the meaning given to that term in Oregon Revised Statutes (ORS) 743.066. ORS 743.066(4) states, “A ‘religious employer’ is an employer: (a) Whose purpose is the inculcation of religious values; (b) That primarily employs persons who share the religious tenets of the employer; (c) That primarily serves persons who share the religious tenets of the employer; and (d) That is a nonprofit organization under section 6033(a)(2)(A)(i) or (iii) of the Internal Revenue Code.”

Section 6033(a)(2)(A) of the Internal Revenue Code does not include a subsection (i) or (iii). For purpose of analysis I assume the reference to Section 6033(a)(2) is a typographical error and that the Oregon legislature intended to refer instead to Section 6033(a)(3)(A)(i) and (iii). These are the same provisions referred to by the federal version of a religious employer exemption included in a federal version of a contraception mandate. Section 6033(a)(3)(A)(i) refers to “churches, their integrated auxiliaries, and conventions or associations of churches” and Section 6033(a)(3)(A)(iii) refers to “the exclusively religious activities of any religious order.”

The HB 3391 religious employer exemption is far too narrow. It applies only to churches, their integrated auxiliaries, conventions or associations of churches, and the exclusively religious activities of any religious order. This definition excludes the wide range of religious nonprofits that operate as independent, parachurch organizations not affiliated with any church or religious order. Further, even if an employer falls within the very limited range of organizations

contemplated by the HB 3391 religious employer exemption, it may still be excluded if it does not primarily employ people who share its religious tenets or, even more concerning, if it does not primarily serve people who share its religious tenets.

The HB 3391 religious employer exemption is also too narrow because it fails to protect nonreligious entities. Aside from any potential protections offered by the grandfather provision offered above, HB 3391 fails to protect (1) nonreligious business entities owned or operated by individuals with religious or moral objections to facilitating the coverage mandated by the bill, (2) insurance issuers who wish to provide coverage that honors the religious or moral beliefs of their customers but cannot do so without violating HB 3391, and (3) nonreligious nonprofits, such as pro-life organizations, that object on moral grounds to facilitating abortion coverage.

These types of organizations deserve protection too. As I explained in [a paper I wrote for The Heritage Foundation](#), although it is certainly true that “[s]ome questions of freedom present concerns unique to religious institutions,” it is likewise true that “religious institutions are not the only stakeholders in this country with an interest in the freedom to operate according to their religious and moral beliefs.” As I wrote in that paper, “Religious and moral objections to paying for, providing, facilitating, or otherwise participating in health insurance plans that include or facilitate access to abortion-inducing drugs, sterilization procedures, contraceptives, and related education and counseling are just as honestly held by individuals and nonreligious enterprises as they are by religious institutions.”

This is particularly true in the area of health care. “Unlike situations presenting issues of freedom with respect to uniquely religious matters, health care issues present a broad range of issues that require moral consideration by religious and nonreligious individuals and institutions alike.” I explained, “Some of this moral consideration will be informed by religious beliefs, some of it will stem from reflections of a different nature, and some of it will involve both types of reasoning. In the context of health care,” I continued, “it makes sense to protect conscientious objection based on moral beliefs as well as conscientious objection based on religious beliefs”

By failing to protect moral pro-life beliefs as well as nonreligious entities, Oregon HB 3391 would crush religious freedom and freedom of conscience on one of the most existentially fundamental questions any person or organization must confront. Protections for religious freedom should not be limited to churches or even to religious organizations. And protections for conscientious objection should include objections based on moral conscience as well as religious belief.

HB 3391 Hates on Social Justice

As I explained above, HB 3391 excludes from the religious employer exemption those religious employers that do not primarily serve people who share its religious beliefs. That’s bad policy because of the narrow scope of protection for religious freedom. But it’s also bad policy for penalizing any religious organization that does not serve primarily members of its own religion.

By penalizing religious organizations that serve all people, not just primarily members of its own religion, HB 3391 undermines the social justice elements of so many religious charitable activities. [The U.S. Conference of Catholic Bishops \(USCCB\) said](#) of a similar but since-amended federal definition of religious employer that “even the ministry of Jesus and the early Christian Church would not qualify as ‘religious,’ because they did not confine their ministry to their co-religionists or engage only in a preaching ministry. In effect,” the USCCB explained, “the exemption is directly at odds with the parable of the Good Samaritan, in which Jesus teaches concern and assistance for those in need, regardless of faith differences.” The same criticism applies with equal weight to the definition of religious employer in the Oregon law.

Accordingly, on top of attacking life and crushing civil liberties, the Oregon bill also hates on social justice, because it penalizes religious organizations that do not limit their charitable services to primarily members of their own faith. This is the antithesis of progressive policy in an enlightened society.

Broader Lessons of HB 3391

[The culture wars have morphed into conscience wars.](#) Middle ground disappears. The struggle to protect human life has opened a new front to protect the individuals and institutions that seek to protect human life.

Pro-abortion activists no longer content themselves with even unfettered access to abortion on demand throughout all pregnancy. The new goal for abortion activists includes forcing all but the smallest set of religious organizations to participate in abortion.

The struggle for civilizational values such as protecting innocent human life goes hand in hand with the struggle for greater political freedom and social flourishing. People of good will who support civil liberties or social justice should make common cause with the pro-life movement.

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