

AMENDMENT NO. _____ Calendar No. _____

Purpose: To amend the Patient Protection and Affordable Care Act to protect rights of conscience with regard to requirements for coverage of specific items and services.

IN THE SENATE OF THE UNITED STATES—112th Cong., 2d Sess.

S. 1813

To reauthorize Federal-aid highway and highway safety construction programs, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by _____

Viz:

1 On page __, between lines __ and __, insert the fol-
2 lowing:

3 **SEC. __. RESPECT FOR RIGHTS OF CONSCIENCE.**

4 (a) FINDINGS AND PURPOSES.—

5 (1) FINDINGS.—Congress finds the following:

6 (A) As Thomas Jefferson declared to New
7 London Methodists in 1809, “[n]o provision in
8 our Constitution ought to be dearer to man
9 than that which protects the rights of con-
10 science against the enterprises of the civil au-
11 thority”.

1 (B) Jefferson’s statement expresses a con-
2 viction on respect for conscience that is deeply
3 embedded in the history and traditions of our
4 Nation and codified in numerous State and
5 Federal laws, including laws on health care.

6 (C) Until enactment of the Patient Protec-
7 tion and Affordable Care Act (Public Law 111–
8 148, in this section referred to as “PPACA”),
9 the Federal Government has not sought to im-
10 pose specific coverage or care requirements that
11 infringe on the rights of conscience of insurers,
12 purchasers of insurance, plan sponsors, bene-
13 ficiaries, and other stakeholders, such as indi-
14 vidual or institutional health care providers.

15 (D) PPACA creates a new nationwide re-
16 quirement for health plans to cover “essential
17 health benefits” and “preventive services” (in-
18 cluding a distinct set of “preventive services for
19 women”), delegating to the Department of
20 Health and Human Services the authority to
21 provide a list of detailed services under each
22 category, and imposes other new requirements
23 with respect to the provision of health care
24 services.

1 (E) While PPACA provides an exemption
2 for some religious groups that object to partici-
3 pation in Government health programs gen-
4 erally, it does not allow purchasers, plan spon-
5 sors, and other stakeholders with religious or
6 moral objections to specific items or services to
7 decline providing or obtaining coverage of such
8 items or services, or allow health care providers
9 with such objections to decline to provide them.

10 (F) By creating new barriers to health in-
11 surance and causing the loss of existing insur-
12 ance arrangements, these inflexible mandates in
13 PPACA jeopardize the ability of individuals to
14 exercise their rights of conscience and their
15 ability to freely participate in the health insur-
16 ance and health care marketplace.

17 (2) PURPOSES.—The purposes of this section
18 are—

19 (A) to ensure that health care stakeholders
20 retain the right to provide, purchase, or enroll
21 in health coverage that is consistent with their
22 religious beliefs and moral convictions, without
23 fear of being penalized or discriminated against
24 under PPACA; and

1 (B) to ensure that no requirement in
2 PPACA creates new pressures to exclude those
3 exercising such conscientious objection from
4 health plans or other programs under PPACA.

5 (b) RESPECT FOR RIGHTS OF CONSCIENCE.—

6 (1) IN GENERAL.—Section 1302(b) of the Pa-
7 tient Protection and Affordable Care Act (Public
8 Law 111–148; 42 U.S.C. 18022(b)) is amended by
9 adding at the end the following new paragraph:

10 “(6) RESPECTING RIGHTS OF CONSCIENCE
11 WITH REGARD TO SPECIFIC ITEMS OR SERVICES.—

12 “(A) FOR HEALTH PLANS.—A health plan
13 shall not be considered to have failed to provide
14 the essential health benefits package described
15 in subsection (a) (or preventive health services
16 described in section 2713 of the Public Health
17 Service Act), to fail to be a qualified health
18 plan, or to fail to fulfill any other requirement
19 under this title on the basis that it declines to
20 provide coverage of specific items or services be-
21 cause—

22 “(i) providing coverage (or, in the
23 case of a sponsor of a group health plan,
24 paying for coverage) of such specific items
25 or services is contrary to the religious be-

1 liefs or moral convictions of the sponsor,
2 issuer, or other entity offering the plan; or
3 “(ii) such coverage (in the case of in-
4 dividual coverage) is contrary to the reli-
5 gious beliefs or moral convictions of the
6 purchaser or beneficiary of the coverage.

7 “(B) FOR HEALTH CARE PROVIDERS.—
8 Nothing in this title (or any amendment made
9 by this title) shall be construed to require an
10 individual or institutional health care provider,
11 or authorize a health plan to require a provider,
12 to provide, participate in, or refer for a specific
13 item or service contrary to the provider’s reli-
14 gious beliefs or moral convictions. Notwith-
15 standing any other provision of this title, a
16 health plan shall not be considered to have
17 failed to provide timely or other access to items
18 or services under this title (or any amendment
19 made by this title) or to fulfill any other re-
20 quirement under this title because it has re-
21 spected the rights of conscience of such a pro-
22 vider pursuant to this paragraph.

23 “(C) NONDISCRIMINATION IN EXERCISING
24 RIGHTS OF CONSCIENCE.—No Exchange or
25 other official or entity acting in a governmental

1 capacity in the course of implementing this title
2 (or any amendment made by this title) shall
3 discriminate against a health plan, plan spon-
4 sor, health care provider, or other person be-
5 cause of such plan's, sponsor's, provider's, or
6 person's unwillingness to provide coverage of,
7 participate in, or refer for, specific items or
8 services pursuant to this paragraph.

9 “(D) CONSTRUCTION.—Nothing in sub-
10 paragraph (A) or (B) shall be construed to per-
11 mit a health plan or provider to discriminate in
12 a manner inconsistent with subparagraphs (B)
13 and (D) of paragraph (4).

14 “(E) PRIVATE RIGHTS OF ACTION.—The
15 various protections of conscience in this para-
16 graph constitute the protection of individual
17 rights and create a private cause of action for
18 those persons or entities protected. Any person
19 or entity may assert a violation of this para-
20 graph as a claim or defense in a judicial pro-
21 ceeding.

22 “(F) REMEDIES.—

23 “(i) FEDERAL JURISDICTION.—The
24 Federal courts shall have jurisdiction to
25 prevent and redress actual or threatened

1 violations of this paragraph by granting all
2 forms of legal or equitable relief, including,
3 but not limited to, injunctive relief, declar-
4 atory relief, damages, costs, and attorney
5 fees.

6 “(ii) INITIATING PARTY.—An action
7 under this paragraph may be instituted by
8 the Attorney General of the United States,
9 or by any person or entity having standing
10 to complain of a threatened or actual viola-
11 tion of this paragraph, including, but not
12 limited to, any actual or prospective plan
13 sponsor, issuer, or other entity offering a
14 plan, any actual or prospective purchaser
15 or beneficiary of a plan, and any individual
16 or institutional health care provider.

17 “(iii) INTERIM RELIEF.—Pending
18 final determination of any action under
19 this paragraph, the court may at any time
20 enter such restraining order or prohibi-
21 tions, or take such other actions, as it
22 deems necessary.

23 “(G) ADMINISTRATION.—The Office for
24 Civil Rights of the Department of Health and
25 Human Services is designated to receive com-

1 plaints of discrimination based on this para-
2 graph and coordinate the investigation of such
3 complaints.

4 “(H) ACTUARIAL EQUIVALENCE.—Nothing
5 in this paragraph shall prohibit the Secretary
6 from issuing regulations or other guidance to
7 ensure that health plans excluding specific
8 items or services under this paragraph shall
9 have an aggregate actuarial value at least
10 equivalent to that of plans at the same level of
11 coverage that do not exclude such items or serv-
12 ices.”.

13 (2) EFFECTIVE DATE.—The amendment made
14 by paragraph (1) shall be effective as if included in
15 the enactment of Public Law 111–148.